

<i>SERFF Tracking Number:</i>	<i>BEAC-125762051</i>	<i>State:</i>	<i>Arkansas</i>
<i>First Filing Company:</i>	<i>The Employers' Fire Insurance Company, ...</i>	<i>State Tracking Number:</i>	<i>EFT \$100</i>
<i>Company Tracking Number:</i>	<i>2008-GL-AR-FO-490</i>		
<i>TOI:</i>	<i>17.0 Other Liability - Claims Made/Occurrence</i>	<i>Sub-TOI:</i>	<i>17.0000 Other Liability Sub-TOI Combinations</i>
<i>Product Name:</i>	<i>@vantage 4 Tech</i>		
<i>Project Name/Number:</i>	<i>Tech Rates, Rules, and Forms /490</i>		

## Filing at a Glance

Companies: The Employers' Fire Insurance Company, OneBeacon America Insurance Company

Product Name: @vantage 4 Tech

SERFF Tr Num: BEAC-125762051 State: Arkansas

TOI: 17.0 Other Liability - Claims

SERFF Status: Closed

State Tr Num: EFT \$100

Made/Occurrence

Sub-TOI: 17.0000 Other Liability Sub-TOI

Co Tr Num: 2008-GL-AR-FO-490

State Status: Fees verified and received

Combinations

Filing Type: Form

Co Status:

Reviewer(s): Betty Montesi, Edith Roberts

Authors: Judith Carrasco, Linda Jordan-Dow

Disposition Date: 10/22/2008

Date Submitted: 08/05/2008

Disposition Status: Approved

Effective Date Requested (New): 11/15/2008

Effective Date (New):

Effective Date Requested (Renewal): 11/15/2008

Effective Date (Renewal):

State Filing Description:

## General Information

Project Name: Tech Rates, Rules, and Forms

Project Number: 490

Reference Organization:

Reference Title:

Filing Status Changed: 10/22/2008

State Status Changed: 09/02/2008

Corresponding Filing Tracking Number:

Filing Description:

Status of Filing in Domicile:

Domicile Status Comments:

Reference Number:

Advisory Org. Circular:

Deemer Date:

On behalf of the captioned companies (the Companies), members of the OneBeacon Insurance Group, we hereby submit for your review and approval new and revised forms, endorsements applicable to the Companies @vantage program for Technology accounts. The Companies propose this filing be approved for applicable new and renewal policies effective on or after 11/15/08.

The purpose of the filing is to institute the changes noted below to the Companies' @vantage program for Technology

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accounts.

#### A. Forms and Endorsements:

##### 1. Professional Liability Coverage-

- Revised Technology Errors and Omissions Coverage Form- APR 001
- New optional Data Privacy Liability Coverage Form – APR 009
- New optional Communication Liability Coverage Form- APR 010
- New optional endorsement Total Intellectual Property Exclusion- APR 222
- Revised Unauthorized Access Endorsement -APR 218

##### 2. Commercial General Liability

New optional endorsement @vantage for General Liability Technology Companies-VCG 207

## Company and Contact

#### Filing Contact Information

Linda Jordan-Dow, Senior Compliance Analyst [ljordandow@onebeacon.com](mailto:ljordandow@onebeacon.com)  
 One Beacon Lane (781) 332-7262 [Phone]  
 Canton, MA 02021 (617) 725-6888[FAX]

#### Filing Company Information

The Employers' Fire Insurance Company	CoCode: 20648	State of Domicile: Massachusetts
One Beacon Lane	Group Code: 1129	Company Type:
Canton, MA 02021-1030	Group Name:	State ID Number:
(781) 332-7000 ext. [Phone]	FEIN Number: 04-1288420	

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OneBeacon America Insurance Company	CoCode: 20621	State of Domicile: Massachusetts
One Beacon Lane	Group Code: 1129	Company Type:
Canton, MA 02021-1030	Group Name:	State ID Number:
(781) 332-7000 ext. [Phone]	FEIN Number: 04-2475442	

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## Filing Fees

Fee Required? Yes  
Fee Amount: \$100.00  
Retaliatory? No  
Fee Explanation: \$50 for each filing. Separate fees are required for each line of business. There are two lines of business so the filing fee is \$100.  
Per Company: No

COMPANY	AMOUNT	DATE PROCESSED	TRANSACTION #
The Employers' Fire Insurance Company	\$0.00	08/05/2008	
OneBeacon America Insurance Company	\$100.00	08/05/2008	21790619

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Product Name: @vantage 4 Tech

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## Correspondence Summary

### Dispositions

Status	Created By	Created On	Date Submitted
Approved	Edith Roberts	10/22/2008	10/22/2008

### Objection Letters and Response Letters

Objection Letters				Response Letters		
Status	Created By	Created On	Date Submitted	Responded By	Created On	Date Submitted
Pending	Edith Roberts	09/02/2008	09/02/2008	Linda Jordan-Dow	10/08/2008	10/08/2008
Industry						
Response						

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## Disposition

Disposition Date: 10/22/2008

Effective Date (New):

Effective Date (Renewal):

Status: Approved

Comment:

Rate data does NOT apply to filing.

### Overall Rate Information for Multiple Company Filings

Overall Percentage Rate Indicated For This Filing	0.000%
Overall Percentage Rate Impact For This Filing	0.000%
Effect of Rate Filing-Written Premium Change For This Program	\$0
Effect of Rate Filing - Number of Policyholders Affected	0

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Item Type	Item Name	Item Status	Public Access
Supporting Document	Uniform Transmittal Document-Property & Casualty	Approved	No
Supporting Document	Explanatory Memorandums	Approved	No
Supporting Document	Side by Side Mark Ups	Approved	No
Form	Technology Errors Or Omissions Coverage Form	Approved	No
Form	Data Privacy Liability Protection Coverage Form	Approved	No
Form	Communications Liability Protection Coverage Form	Approved	No
Form	Supplemental Extended Reporting Period	Approved	No
Form	Security Breach – Technology Errors Or Omissions	Approved	No
Form	Total Intellectual Property Exclusion	Approved	No
Form	Arkansas Changes	Approved	No
Form	@Vantage For General Liability Technology Companies	Approved	No

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## Objection Letter

Objection Letter Status Pending Industry Response  
Objection Letter Date 09/02/2008  
Submitted Date 09/02/2008  
Respond By Date  
Dear Linda Jordan-Dow,

This will acknowledge receipt of the captioned filing.

This coverage is written with defense expenses payable within the limit of liability and can only be approved for risks with \$1,000,000 limits or greater. Please confirm and file a companion rule to that effect. This is pursuant to AR Code Anno 23-79-307 (5) and AID Order # 2007-033.

Please feel free to contact me if you have questions.

Sincerely,  
Edith Roberts

## Response Letter

Response Letter Status Submitted to State  
Response Letter Date 10/08/2008  
Submitted Date 10/08/2008

Dear Edith Roberts,

### Comments:

### Response 1

Comments: This is in reponse to your objection letter dated 9/2/2008, in which you stated that defense expenses payable with the limit of liability can only be approved for risks with \$1,000,000 limits or greater.

This is to confirm that we are amending the Increased Limit Factors to eliminate limits below \$1,000,000. When coverage includes Defense Within Limits, the limit must be at least \$1,000,000.

We are amending the companion filing 2008-GL-AR-RR-490 to include this change.

### Changed Items:

*SERFF Tracking Number:*      *BEAC-125762051*      *State:*      *Arkansas*  
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*TOI:*      *17.0 Other Liability - Claims Made/Occurrence*      *Sub-TOI:*      *17.0000 Other Liability Sub-TOI Combinations*  
*Product Name:*      *@vantage 4 Tech*  
*Project Name/Number:*      *Tech Rates, Rules, and Forms /490*

No Supporting Documents changed.

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Sincerely,  
Judith Carrasco, Linda Jordan-Dow



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Product Name: @vantage 4 Tech

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## Form Schedule

Review Status	Form Name	Form #	Edition Date	Form Type Action	Action Specific Data	Readability	Attachment
Approved	Technology Errors Or Omissions Coverage Form	APR 001	06 07	Policy/CoveReplaced rage Form	Replaced Form #:0.00 APR 001 03 06 Previous Filing #:		APR 001 06 07.pdf
Approved	Data Privacy Liability Protection Coverage Form	APR 009	06 07	Policy/CoveNew rage Form		0.00	APR 009 06 07.pdf
Approved	Communications Liability Protection Coverage Form	APR 010	06 07	Policy/CoveNew rage Form		0.00	APR 010 06 07.pdf
Approved	Supplemental Extended Reporting Period	APR 206	06 07	Endorseme Replaced nt/Amendm ent/Condi ti ons	Replaced Form #:0.00 APR 206 03 06 Previous Filing #:		APR 206 06 07.pdf
Approved	Security Breach – Technology Errors Or Omissions	APR 218	06 07	Endorseme Replaced nt/Amendm ent/Condi ti ons	Replaced Form #:0.00 APR 218 03 06 Previous Filing #:		APR 218 06 07.pdf
Approved	Total Intellectual Property Exclusion	APR 222	06 07	Endorseme New nt/Amendm ent/Condi ti ons		0.00	APR 222 06 07.pdf
Approved	Arkansas Changes	APR 704 AR	06 07	Endorseme Replaced nt/Amendm ent/Condi ti ons	Replaced Form #:0.00 APR 704 AR 03 06 Previous Filing #:		APR 704 AR 06 07.pdf
Approved	@Vantage For General Liability Technology Companies	VCG 207	06 07	Endorseme New nt/Amendm ent/Condi ti ons		0.00	VCG 207 06 07.pdf

# TECHNOLOGY ERRORS OR OMISSIONS COVERAGE FORM

**THIS FORM PROVIDES CLAIMS MADE COVERAGE. PLEASE READ THE ENTIRE FORM CAREFULLY.**

Read this entire coverage form carefully to determine rights, duties and what is and is not covered. Various provisions in this policy restrict coverage.

Throughout this coverage form, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under **Section II – WHO IS AN INSURED**.

Other words and phrases that appear in **bold** may have special meaning. Refer to **Section VII – DEFINITIONS**.

## SECTION I - COVERAGE

### 1. Insuring Agreement

- a. We will pay damages that the insured becomes legally obligated to pay arising out of **your technology offerings** because of an **error or omission** to which this insurance applies. We will have the right and duty to defend the insured against **suits** seeking covered damages. However, we will have no duty to defend the insured for **suits** to which this insurance does not apply. We may, at our discretion, investigate any **claim** based on an alleged **error or omission**. But:
  - (1) Both the amount we will pay for damages and the amount we will pay in **defense costs** are limited as described in **Section III - LIMITS OF INSURANCE** and **Section V - DEDUCTIBLE**; and
  - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in payment of judgments, settlements or **defense costs**. No other obligation or liability to pay sums or perform acts or services is covered.
- b. This insurance applies to **claims** for damages first made against an insured during the policy period or any Extended Reporting Period we provide under **Section VI – EXTENDED REPORTING PERIODS** caused by an **error or omission** if:
  - (1) The **claim** arises out of an **error or omission** that takes place in the **Coverage territory**; and
  - (2) The **error or omission** takes place:
    - (a) After the Retroactive Date, if any, shown in the Declarations; and
    - (b) Before the end of the policy period.

Each **error or omission** in a **series of related errors or omissions** will be deemed to have been committed on the date the first **error or omission** in a **series of related errors or omissions** is committed. The first **error or omission** in a **series of related errors or omissions** must take place after the Retroactive Date, if any, shown in the Declarations, and before the end of the policy period for this insurance to apply.

- c. A **claim** by a person or organization seeking damages will be deemed to have been made at the earlier of the following times:
  - (1) When notice of such **claim** is received by any insured or by us, whichever comes first; or
  - (2) If notice of an **error or omission** is provided pursuant to **SECTION VIII - CONDITIONS** and a **claim** based on that **error or omission** is subsequently made, the date we receive written notice of such **error or omission**.

If multiple **claims** result from the same **error or omission**, or series of related **errors or omissions**, all such **claims** will be deemed to have been made on the date the first of those **claims** is made.

## 2. Exclusions

This insurance does not apply to any **claim** based upon, arising out of or in any way related to:

### a. Assumed Liability

Liability assumed by any insured under any contract or agreement. This exclusion does not apply to:

- (1) Liability for damages that the insured would have had in the absence of the contract or agreement; or
- (2) Liability assumed in a contract or agreement provided that the damages, to which this insurance applies, are caused by **errors or omissions** first committed by you or on your behalf after the execution of such contract or agreement.

### b. Bodily Injury or Property Damage

- (1) Bodily injury, sickness, disease, mental anguish, mental injury, humiliation, shock, loss of services or death; or
- (2) Physical injury to tangible property whether or not owned by any insured, including all resulting loss of use of that property. Tangible property does not include data or other information that is in electronic form.

### c. Correct, Repair or Replace

The cost or expense for the correction, repair or replacement of **your technology offerings**.

### d. Cost Estimates

Your costs, charges or fees that:

- (1) Exceed your, or your agent's, guarantees or estimates;
- (2) Are misrepresented, not accurately described in your contract or agreement or not accurately calculated; or
- (3) Are charged for taxes that are neither owed nor remitted to a governmental entity.

### e. Delay in Delivery

- (1) Delay in delivery of; or
- (2) Failure to deliver  
**your technology offerings.**

### f. Delay in Performance

- (1) Delay in performance of; or
- (2) Failure to begin  
**your technology offerings.**

### g. Dishonest Acts

Any actual or alleged dishonest act, including fraudulent, criminal or malicious acts, committed by an insured. This exclusion does not apply to any insured that did not participate in or know about the dishonest act. However we will apply this exclusion to all insureds if the dishonest act is done with the consent or knowledge of the Named Insured or any of the Named Insured's directors, partners or executive officers.

### h. Fines or Penalties

Any fines or penalties imposed by law.

### i. Insured versus Insured

Any claim against an insured that is brought by, or on behalf of, any insured.

### j. Intellectual Property

Any actual or alleged infringement by an insured of copyright, trade dress, trade secret, trade name, trademark or patent; unfair competition or piracy; misappropriation or wrongful taking of concepts, violation or infringement of any other intellectual property right.

**k. Intentional Acts**

Any actual or alleged intentional act committed by an insured. This exclusion does not apply to any insured that did not participate in or know about the intentional act. However, we will apply this exclusion to all insureds if the intentional act is done with the consent or knowledge of the Named Insured or any of the Named Insureds directors, partners or executive officers.

**l. Nuclear Energy**

The furnishing by an insured of services, products, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**.

**m. Personal and Advertising Injury**

Injury, including consequential bodily injury, arising out of one or more of the following offenses:

- (1) False arrest, detention or imprisonment;
- (2) Malicious prosecution;
- (3) The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- (4) Libel or slander;
- (5) Oral or written publication, in any manner, of material that disparages a person's or organization's goods, products or services;
- (6) Oral or written publication, in any manner, of material that violates a person's right of privacy or right of publicity; or
- (7) The use of another's advertising idea in your **advertisement**.

**n. Prior Reported Claims**

Any **claims** that have been reported, in whole or in part, to another insurance company prior to the first effective date from which we have continuously provided this coverage to you.

**o. Pollution**

- (1) The actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of pollutants.
- (2) Any request, demand or order issued or made pursuant to any environmental protection or environmental liability laws that you or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants.

Pollutants means one or more solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, mold(s), alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**p. Product Recall**

The withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) **Your products**;
- (2) Any property on which **your work** was performed; or
- (3) Impaired property, meaning tangible property other than **your technology offerings**, that cannot be used or is less useful because:
  - (a) It incorporates **your technology offerings** that is known or thought to be defective, deficient, or inadequate; or
  - (b) You have failed to fulfill the terms of a contract or agreement;If such property can be restored to use by:
  - (i) The repair, replacement, adjustment or removal of **your technology offerings**, or
  - (ii) Your fulfilling the terms of the contract or agreement;

If such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, or inadequacy in **your technology offerings** or impaired property.

However, we will not apply this exclusion to claims by third parties for loss of use resulting from the withdrawal, recall, inspection, repair, replacement, adjustment or removal of **your technology offerings**.

**q. Unauthorized Access**

Failure to prevent unauthorized access to, or use of any computer, software, network or electronic information system.

**r. Violation of Statutes Governing Methods of Sending Material or Information**

Any distribution of material that violated or is alleged to violate:

- a.** The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b.** The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c.** Any statute, ordinance or regulation, other than TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating, or distribution of material or information.

**s. Violation of Trade Law**

Any actual or alleged violation of any law relating to anti-trust, restraint of trade, unfair trade practices, false or deceptive advertising or any other law protecting competition, consumers or privacy.

## **SECTION II – WHO IS AN INSURED**

**1.** If you are designated in the Declarations as:

- a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d.** An organization other than a partnership, joint venture, or limited liability company, you are an insured. Your **executive officers** and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

**2.** Each of the following is also an insured:

- a.** Your **employees**, other than either your **executive officers** (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.
- b.** Any organization you newly acquire or form, other than a partnership, joint venture, or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However, coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture, or limited liability company that is not shown as a Named Insured in the Declarations.

## **SECTION III – LIMITS OF INSURANCE**

**1.** The Limit of Insurance shown in the Declarations for this coverage and the rules below fix the most we will pay regardless of the number of:

- a.** Insureds;
- b.** **Claims** made; or
- c.** Persons or organizations making **claims**.

**2.** The Limit of Insurance stated as the Annual Aggregate Limit is the most we will pay for the sum of:

- a.** Damages for any **claim(s)**; and

**b. Defense costs** for any **claim(s)** seeking damages payable under **a.** above.

Each payment we make for such damages or **defense costs** reduces the amount of limit available under the Annual Aggregate Limit by the amount of such payment. This reduced limit will then be the Annual Aggregate Limit of Insurance available. When this Annual Aggregate Limit of Insurance is used up, we shall have no further obligation to defend **claim(s)** seeking such damage or pay such damages or **defense costs**.

The Annual Aggregate Limit of Insurance applies separately to each consecutive annual period, and to any remaining period of less than 12 months, starting with the beginning of the policy shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Annual Aggregate Limit of Insurance.

3. Subject to **2.** above, the most we will pay for each **claim**, including **defense costs** for that claim, is the Per Claim Limit of Insurance stated in the Declarations. However, we will not pay until the **claim**, including damages and **Defense costs**, exceeds the Deductible, and then we will pay only the amount in excess of the Deductible.
4. For the purpose of the application of any Limit of Insurance, regardless of the number of insureds or claimants involved, all **claims** arising from an **error or omission** or a **series of related errors or omissions** shall be deemed to be a single **claim**.
5. This insurance applies separately to each insured against whom a **claim** is made. However, the Limits of Insurance are not increased by the number of insureds under the policy.

#### SECTION IV - SUPPLEMENTARY PAYMENTS

1. We will pay, with respect to any **claim** we investigate or settle, or any **suit** against an insured we defend:
  - a. All expenses other than **defense costs** we incur.
  - b. the cost of bonds to release attachments, but only for bond amounts within the applicable Limit of Insurance. We do not have to furnish these bonds.
  - c. All costs, not including **defense costs**, taxed against the insured in a **suit**.
  - d. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance to resolve a claim, we will not pay any prejudgment interest accrued after the offer.
  - e. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Insurance.
2. These payments will not reduce the Limits of insurance. Our obligation to make these payments ends when we have used up the applicable Limits of Insurance.

#### SECTION V - DEDUCTIBLE

1. Your Deductible is the amount shown in the Declarations and applies to each **claim**.
2. For the purpose of the application of the Deductible, regardless of the number of insureds or claimants involved, all **claims** arising from an **error or omission** or a **series of related errors or omissions** shall be deemed to be a single **claim**. Your deductible applies to any payment we make for damages, **defense costs** or Supplementary Payments.
3. We may pay any part or all of the Deductible to settle any **claim**. When we notify you of such payment, you will reimburse us as soon as practicable for such part of the Deductible we paid.

#### SECTION VI - EXTENDED REPORTING PERIODS

1. We will provide one or more Extended Reporting Periods, as described below, if:
  - a. This Coverage Part is canceled or not renewed for any reason except non-payment of the premium; or
  - b. We renew or replace this Coverage Part with insurance that:
    - (1) Has a Retroactive Date later than the date shown in the Declarations of this Coverage Part; or
    - (2) Does not apply to **error or omission** on a claims made basis.
2. Extended Reporting Periods do not extend the policy period or change the scope of coverage provided. They apply only to **claims** for **errors or omissions** that take place after the Retroactive Date, if any, shown in the

Declarations and before the end of the policy period. Once in effect, Extended Reporting Periods may not be canceled.

3. A Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the policy period and lasts for 60 days after the end of the policy period.

The Basic Extended Reporting Period does not apply to **claims** that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such **claims**.

4. A Supplemental Extended Reporting Period is available for terms of 60 months or unlimited duration, but only by an endorsement and for an extra charge. This supplemental period starts 60 days after the end of the policy period.

You must give us a written request for the endorsement, specifying which term is desired, within 60 days after the end of the policy period. The Supplemental Extended Reporting Period will not go into effect unless the insured pays the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

- a. The exposures insured;
- b. Previous types and amounts of insurance;
- c. Limits of Insurance available under this Coverage Part for future payments of damages; and
- d. Other related factors.

The additional premium will not exceed 200% of the annual premium for this Coverage Part.

The endorsement shall set forth the terms, not inconsistent with this Section, applicable to the Supplemental Extended Reporting Period.

The Supplemental Extended Reporting Period does not apply to **claims** that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such **claims**.

5. Extended Reporting Periods do not reinstate or increase the Limits of Insurance applicable to any **claim** to which this coverage form applies.
6. If we cancel or non-renew this coverage form, we will include with the notice of cancellation or non-renewal a Notice To Our Policyholder in which we will advise the insured of the availability of the Supplemental Extended Reporting Period, the additional premium charge of the Supplemental Extended Reporting Period and the importance of purchasing the Supplemental Extended Reporting Period option.

If the insured cancels or non-renews this coverage form or if we agree to renew subject to specific conditions; we will provide the insured with the Notice To Our Policyholder described above within 30 days of the effective date of policy termination or conditional renewal.

## SECTION VII - DEFINITIONS

1. **Advertisement** means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purpose of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. **Claim** means any written demand for money or services, **suit**, or threat to institute a **suit** based on an actual or alleged **error or omission**.
3. **Coverage territory** means anywhere in the world.
4. **Defense costs** means fees incurred by an attorney we designate; and all other reasonable fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **claim** or **suit**. Such fees, costs and expenses must be incurred by us; an attorney we designate; or by the insured with our consent. **Defense costs** includes up to \$1,500 per day in actual lost earnings incurred by the insured due to time

taken off from work at our request and in support of our investigation, adjustment or defense or appeal of a **claim** or **suit**.

5. **Employee** includes a **leased worker** or an **individual contracted worker**. **Employee** does not include a **temporary worker**.
6. **Error or omission** means any negligent act, error or omission committed by you in the conduct of your business resulting in the failure of **your technology offerings** to perform the function or serve the purpose intended.
7. **Executive officer** means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
8. **Individual contracted worker** means an individual person hired under contract by you for a specific task, but only while acting within the scope of their duties for you and performing duties related to the conduct of your business under your direction.
9. **Leased worker** means a person leased to you by a labor leasing firm, under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. **Leased worker** does not include a **temporary worker**.
10. **Nuclear facility** means:
  - a. Any **nuclear reactor**;
  - b. Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste;
  - c. Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combinations thereof, or more than 250 grams of uranium 235;
  - d. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of, waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.
11. **Nuclear reactor** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
12. **Series of related errors or omissions** means two or more **errors or omissions** that have a common connection by reason of fact, circumstance, transaction or event.
13. **Suit** means a civil proceeding seeking damages based on an alleged **error or omission** to which this insurance applies. **Suit** includes:
  - a. An arbitration proceeding in which such damages are alleged to which you must submit, or one to which you may submit with our consent. .
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
14. **Temporary worker** means a person who is furnished to you to substitute for a permanent **employee** on leave or to meet seasonal or short-term workload conditions.
15. **Your products** means goods, programs, designs, products, services or components which you or others trading under your name manufactured, sold, handled, or distributed.

**Your products** includes:

  - a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your products**; and
  - b. The providing of or failure to provide warnings or instructions.
16. **Your technology offerings** means **your products** and **your work**.
17. **Your work** means work, service or operations performed by you or on your behalf for others including:
  - a. Analyzing, designing, integrating, maintaining, processing, programming, providing repairing or servicing software, programs or systems; or
  - b. Analyzing, designing or maintaining any communications network, web site or internet operation; or



- c. Managing or processing data or other information that is in electronic form; or
- d. Consulting, staffing, training and other support services related to **your technology offerings**; or
- e. Materials, parts or equipment furnished in connection with such work.

**Your work** includes;

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your work**; and
- b. The providing of or failure to provide warnings and instructions.

## SECTION VIII - CONDITIONS

The following conditions apply in addition to the Common Policy Conditions. In case of conflict between these conditions and the Common Policy Conditions, these conditions shall apply as respects this Coverage Part.

### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

### 2. Duties in the Event of Error or Omission, Claim, or Suit

- a. When you become aware of an **error or omission**, you must see to it that we are notified as soon as practicable of the **error or omission**. The notice must include:

- (1) How, when and where the **error or omission** took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any damage arising out of the **error or omission**.

Notice of an **error or omission** is not notice of a **claim**. However, any **claim** resulting from the circumstances described in a notice of an **error or omission** will be deemed to have been made on the date we receive such notice.

- b. If a **claim** is made or **suit** is brought against any insured, you must:

- (1) Immediately record the specifics of the **claim** or **suit** and the date received; and
- (2) See to it we receive written notice of the **claim** or **suit** as soon as practicable;
- (3) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **claim** or **suit**;
- (4) Authorize us to obtain records and other information relating to the **claim** or **suit**;
- (5) Cooperate with us in the investigation, settlement or defense of the **claim** or **suit**; and
- (6) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to an insured for the covered damages which we paid in the **claim** or **suit** to which this insurance may also apply.

- c. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, incur any expense, or settle any **claim** or **suit**, without our consent.

### 3. Legal Action Against Us

No person or organization has a right under this coverage form:

- a. To join us as a party or otherwise bring us into a **suit** asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial, but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

**a. Excess Insurance**

This insurance is excess over any other collectible insurance, whether primary, excess, contingent or on any other basis, including insurance that is effective prior to the beginning of the policy period shown in the Declarations of this insurance and applies to **errors or omissions** on other than a **claims** made basis.

We will have no duty to defend the insured against any **claim** or **suit** if any other insurer has a duty to defend the insured against that **claim** or **suit**. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

We will pay only our share of the amount of the **claim** or **suit**, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining amount, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**b. Non Accumulation of Limits**

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same **claim**, the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this coverage form.

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations, documentation, data and other material you have furnished us.

**7. Separation of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom **claim** is made or **suit** is brought.

**8. Transfer of Rights of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring **suit** or transfer those rights to us and help us enforce them. Any recovery will be paid first to us until all amounts we have spent on a **claim** or **suit** have been reimbursed. The insured expressly waives the right to be made whole by any such recovery.

# DATA PRIVACY LIABILITY PROTECTION COVERAGE FORM

**THIS FORM PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS. PLEASE READ THE ENTIRE FORM CAREFULLY.**

Read this entire coverage form carefully to determine rights, duties and what is and is not covered. Various provisions in this policy restrict coverage.

Throughout this coverage form, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under **Section II – WHO IS AN INSURED**.

Other words and phrases that appear in **bold** may have special meaning. Refer to **Section VII – DEFINITIONS**.

## SECTION I - COVERAGE

### 1. Insuring Agreement

- a. We will pay damages that the insured becomes legally obligated to pay arising out of a **wrongful act**. We will have the right and duty to defend the insured against **suits** seeking covered damages. However, we will have no duty to defend the insured for **suits** to which this insurance does not apply. We may, at our discretion, investigate any **claim**. But:
  - (1) Both the amount we will pay for damages and the amount we will pay in **defense costs** are limited as described in **Section III - LIMITS OF INSURANCE** and **Section V - DEDUCTIBLE**; and
  - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in payment of judgments, settlements or **defense costs**. No other obligation or liability to pay sums or perform acts or services is covered.
- b. This insurance applies to **claims** for damages first made against an insured during the policy period and reported to us during the policy period or any Extended Reporting Period we provide under **Section VI – EXTENDED REPORTING PERIODS** if:
  - (1) The **claim** arises out of a **wrongful act** that takes place in the **Coverage territory**; and
  - (2) The **wrongful act** takes place:
    - (a) After the Retroactive Date, if any, shown in the Declarations; and
    - (b) Before the end of the policy period.

Each **wrongful act** in a **series of related wrongful acts** will be deemed to have been committed on the date the first **wrongful act** in a **series of related wrongful acts** is committed. The first **wrongful act** in a **series of related wrongful acts** must take place after the Retroactive Date, if any, shown in the Declarations, and before the end of the policy period for this insurance to apply.
- c. A **claim** by a person or organization seeking damages will be deemed to have been made at the earlier of the following times:
  - (1) When notice of such **claim** is received by any insured or by us, whichever comes first; or;
  - (2) If notice of a **wrongful act** is provided pursuant to **SECTION VIII - CONDITIONS** and a **claim** based on that **wrongful acts** is subsequently made, the date we receive written notice of such **wrongful act**.

If multiple **claims** result from the same **wrongful act**, or **series of related wrongful acts**, all such **claims** will be deemed to have been made on the date the first of those **claims** is made.

## 2. Exclusions

This insurance does not apply to any actual or alleged **claim** based upon, arising out of or in any way related to:

### a. Assumed Liability

Liability assumed by any insured under any contract or agreement. This exclusion does not apply to:

- (1) Liability for damages that the insured would have had in the absence of the contract or agreement; or
- (2) Liability assumed in a contract or agreement provided that the damages to which this insurance applies are caused by **wrongful acts** first committed by you or on your behalf after the execution of such contract or agreement.

### b. Bodily Injury or Property Damage

- (1) Bodily injury, sickness, disease, mental anguish, mental injury, humiliation, shock, loss of services or death; or
- (2) Physical injury to tangible property whether or not owned by any insured, including all resulting loss of use of that property. Tangible property does not include data or other information that is in electronic form.

### c. Costs to Correct, Repair, Replace or Comply

Any cost or expenses you incur to correct, repair, replace or upgrade your property, facilities, software, systems or to comply with any regulation, ordinance, law, or contract.

### d. Dishonest Acts

Any actual or alleged dishonest act, including fraudulent, criminal or malicious acts, by an insured. This exclusion does not apply to any insured that did not participate in or know about the dishonest act. However we will apply this exclusion to all insureds if the dishonest act is done with the consent or knowledge of the Named Insured or any of the Named Insured's directors, partners or executive officers.

### e. Economic Injury

Any loss of income, loss of profits, loss of royalties, monetary value of lost market share, loss of goodwill, or damage to business reputation.

### f. Failure to Maintain

Any claim resulting from your failure to take reasonable steps to design, use, maintain and upgrade your security.

### g. False Information

Any information that is inaccurate, misleading, or untruthful.

### h. Fines or Penalties

Any fines or penalties imposed by law.

### i. Injunctive Relief

Any injunctive or other equitable relief, or the cost to comply with such relief.

### j. Insured versus Insured

Any claim against an insured that is brought by, or on behalf of, any insured.

### k. Intellectual Property

Any infringement of copyright, trade dress, trade secret, trade name, trademark or patent; unfair competition or piracy; misappropriation or wrongful taking of concepts, or any other violation or infringement of any other intellectual property right.

### l. Intentional Acts

Any intentional act by an insured. This exclusion does not apply to any insured that did not participate in or know about the intentional act. However, we will apply this exclusion to all insureds if the intentional act is done with the consent or knowledge of the Named Insured or any of the Named Insureds directors, partners or executive officers.

**m. Nuclear Energy**

The furnishing by an insured of services, products, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**.

**n. Personal and Advertising Injury Offenses**

Injury, including consequential bodily injury, arising out of one or more of the following offenses:

- (1) False arrest, detention or imprisonment;
- (2) Malicious prosecution;
- (3) The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- (4) Libel or slander;
- (5) Oral or written publication, in any manner, of material that disparages a person's or organization's goods, products or services;
- (6) Oral or written publication, in any manner, that violates a person's right of privacy or right of publicity; or
- (7) The use of another's advertising idea in your **advertisement**.

**o. Pollution**

- (1) The actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of pollutants.
- (2) Any request, demand or order issued or made pursuant to any environmental protection or environmental liability laws that you or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants.

Pollutants means one or more solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, mold(s), alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**p. Prior Knowledge or Reported Acts**

Any **wrongful act** the insured had knowledge of or any **wrongful act** that has been reported to another insurance company prior to the effective date of this policy period.

**q. Violation of Statutes Governing Methods of Sending Material or Information**

Any distribution of material that violated or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating, or distribution of material or information.

**r. Violation of Trade Law**

Any violation of any law relating to anti-trust, restraint of trade, unfair trade practices, false or deceptive advertising or any other law protecting competition or consumers.

**SECTION II – WHO IS AN INSURED**

**1. If you are designated in the Declarations as:**

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

- d. An organization other than a partnership, joint venture, or limited liability company, you are an insured. Your **executive officers** and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
- a. Your **employees**, other than either your **executive officers** (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture, or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

1. The Limit of Insurance shown in the Declarations for this coverage and the rules below fix the most we will pay regardless of the number of:
- a. Insureds;
  - b. **Claims** made; or
  - c. Persons or organizations making **claims**.

2. The Limit of Insurance stated as the Annual Aggregate Limit is the most we will pay for the sum of:

- a. Damages for any **claim(s)**; and
- b. **Defense costs** for any **claim(s)** seeking damages payable under **a.** above.

Each payment we make for such damages or **defense costs** reduces the amount of limits available under the Annual Aggregate Limit by the amount of such payment. This reduced limit will then be the Annual Aggregate Limit of Insurance available. When this Annual Aggregate Limit of Insurance is used up, we shall have no further obligation to defend **claim(s)** seeking such damage or pay such damages or **defense costs**.

The Annual Aggregate Limit of Insurance applies separately to each consecutive annual period, and to any remaining period of less than 12 months, starting with the beginning of the policy shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Annual Aggregate Limit of Insurance.

3. Subject to **2.** above, the most we will pay for each **claim**, including **defense costs** for that claim, is the Per Claim Limit of Insurance stated in the Declarations. However, we will not pay until the **claim**, including damages and **Defense costs**, exceeds the Deductible, and then we will pay only the amount in excess of the Deductible.
4. For the purpose of the application of any Limit of Insurance, regardless of the number of insureds or claimants involved, all **claims** arising from a **wrongful act** or a **series of related wrongful acts** shall be deemed to be a single **claim**.
5. This insurance applies separately to each insured against whom a **claim** is made. However, the Limits of Insurance are not increased by the number of insureds under the policy.

### SECTION IV - SUPPLEMENTARY PAYMENTS

1. We will pay, with respect to any **claim** we investigate or settle, or any **suit** against an insured we defend:
- a. All expenses other than **defense costs** we incur.
  - b. the cost of bonds to release attachments, but only for bond amounts within the applicable Limit of Insurance. We do not have to furnish these bonds.
  - c. All costs, not including **defense costs**, taxed against the insured in a **suit**.
  - d. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance to resolve a claim, we will not pay any prejudgment interest accrued after the offer.
  - e. All interest on the full covered amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Insurance.

2. These payments will not reduce the Limits of insurance. Our obligation to make these payments ends when we have used up the applicable Limits of Insurance.

## SECTION V - DEDUCTIBLE

1. Your Deductible is the amount shown in the Declarations and applies to each **claim**.
2. For the purpose of the application of the Deductible, regardless of the number of insureds or claimants involved, all **claims** arising from a **wrongful act** or a **series of related wrongful acts** shall be deemed to be a single **claim**. Your deductible applies to any payment we make for damages, **defense costs** or Supplementary Payments.
3. We may pay any part or all of the Deductible to settle any **claim**. When we notify you of such payment, you will reimburse us as soon as practicable for such part of the Deductible we paid.

## SECTION VI - EXTENDED REPORTING PERIODS

1. We will provide one or more Extended Reporting Periods, as described below, if:
  - a. This Coverage Part is canceled or not renewed for any reason except non-payment of the premium; or
  - b. We renew or replace this Coverage Part with insurance that:
    - (1) Has a Retroactive Date later than the date shown in the Declarations of this Coverage Part; or
    - (2) Does not apply to **wrongful act** on a claims-made basis.
2. Extended Reporting Periods do not extend the policy period or change the scope of coverage provided. They apply only to **claims** for **wrongful acts** that take place after the Retroactive Date, if any, shown in the Declarations and before the end of the policy period. Once in effect, Extended Reporting Periods may not be canceled.
3. A Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the policy period and lasts for 60 days after the end of the policy period.

The Basic Extended Reporting Period does not apply to **claims** that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such **claims**.

4. A Supplemental Extended Reporting Period is available for terms of 60 months or unlimited duration, but only by an endorsement and for an extra charge. This supplemental period starts 60 days after the end of the policy period.

You must give us a written request for the endorsement, specifying which term is desired, within 60 days after the end of the policy period. The Supplemental Extended Reporting Period will not go into effect unless the insured pays the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

- a. The exposures insured;
- b. Previous types and amounts of insurance;
- c. Limits of Insurance available under this Coverage Part for future payments of damages; and
- d. Other related factors.

The additional premium will not exceed 200% of the annual premium for this Coverage Part.

The endorsement shall set forth the terms, not inconsistent with this Section, applicable to the Supplemental Extended Reporting Period.

The Supplemental Extended Reporting Period does not apply to **claims** that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such **claims**.

5. Extended Reporting Periods do not reinstate or increase the Limits of Insurance applicable to any **claim** to which this coverage form applies.
6. If we cancel or non-renew this coverage form, we will include with the notice of cancellation or non-renewal a Notice To Our Policyholder in which we will advise the insured of the availability of the Supplemental Extended Reporting Period, the additional premium charge of the Supplemental Extended Reporting Period and the importance of purchasing the Supplemental Extended Reporting Period option.

If the insured cancels or non-renews this coverage form or if we agree to renew subject to specific conditions; we will provide the insured with the Notice To Our Policyholder described above within 30 days of the effective date of policy termination or conditional renewal.

## SECTION VII - DEFINITIONS

1. **Advertisement** means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purpose of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Only that part of a web-site that about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. **Claim** means any written demand for money or services, **suit**, or threat to institute a **suit** based on an actual or alleged **wrongful acts**.
3. **Coverage territory** means anywhere in the world. However, the insured's responsibility to pay damages must be determined in a settlement we agree to or in a suit on the merits brought within the United States of America (including its territories and possessions), Puerto Rico or Canada.
4. **Defense costs** means fees incurred by an attorney we designate; and all other reasonable fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **claim** or **suit**. Such fees, costs and expenses must be incurred by us, an attorney we designate, or by the insured with our consent. **Defense costs** includes up to \$1,500 per day in actual lost earnings incurred by the insured due to time taken off from work at our request and in support of our investigation, adjustment or defense or appeal of a **claim** or **suit**.
5. **Employee** includes a **leased worker**. **Employee** does not include a **temporary worker**.
6. **Executive officer** means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. **Leased worker** means a person leased to you by a labor leasing firm, under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. **Leased worker** does not include a **temporary worker**.
8. **Nuclear facility** means:
  - a. Any **nuclear reactor**;
  - b. Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste;
  - c. Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combinations thereof, or more than 250 grams of uranium 235;
  - d. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of, waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.
9. **Nuclear reactor** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
10. **Private Data**

Information in your care, custody or control, and which you have a duty to protect that is:

  - a. In a written or other tangible form, or;
  - b. Contained on electronic media, or;
  - c. Transmitted, processed, or retrieved through electronic means.
11. **Series of related wrongful acts** means two or more **wrongful acts** that have a common connection by reason of fact, circumstance, transaction or event.



12. **Suit** means a civil proceeding seeking damages based on an alleged **wrongful act** to which this insurance applies. **Suit** includes:
- a. An arbitration proceeding in which such damages are alleged to which you must submit, or one to which you may submit with our consent.
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
13. **Temporary worker** means a person who is furnished to you to substitute for a permanent **employee** on leave or to meet seasonal or short-term workload conditions.
14. **Wrongful Act**
- Your failure to protect the **private data** of others.

## SECTION VIII - CONDITIONS

The following conditions apply in addition to the Common Policy Conditions. In case of conflict between these conditions and the Common Policy Conditions, these conditions shall apply as respects this Coverage Part.

### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

### 2. Duties in the Event of a Wrongful Act, Claim, or Suit

- a. When you become aware of a **wrongful act**, you must see to it that we are notified within 60 days. The notice must include:

- (1) How, when and where the **wrongful act** took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any damage arising out of the **wrongful act**.

Notice of a **wrongful act** is not notice of a **claim**. However, any **claim** resulting from the circumstances described in a notice of a **wrongful act** will be deemed to have been made on the date we receive such notice.

- b. If a **claim** is made or **suit** is brought against any insured, you must:

- (1) Immediately record the specifics of the **claim** or **suit** and the date received;
- (2) See to it that we receive written notice of the **claim** or **suit** as soon as practicable;
- (3) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **claim** or **suit**;
- (4) Authorize us to obtain records and other information relating to the **claim** or **suit**;
- (5) Cooperate with us in the investigation, settlement or defense of the **claim** or **suit**; and
- (6) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to an insured for the covered damages which we paid in the **claim** or **suit** to which this insurance may also apply.

- c. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, incur any expense, or settle any **claim** or **suit**, without our consent.

### 3. Legal Action Against Us

No person or organization has a right under this coverage form:

- a. To join us as a party or otherwise bring us into a **suit** asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial, but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

**a. Excess Insurance**

This insurance is excess over any other collectible insurance, whether primary, excess, contingent or on any other basis, including insurance that is effective prior to the beginning of the policy period shown in the Declarations of this insurance and applies to **wrongful acts** on other than a claims made basis.

We will have no duty to defend the insured against any **claim** or **suit** if any other insurer has a duty to defend the insured against that **claim** or **suit**. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

We will pay only our share of the amount of the **claim** or **suit**, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining amount, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**b. Non Accumulation of Limits**

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same **claim**, the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this coverage form.

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations, documentation, data and other material you have furnished us.

**7. Separation of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom **claim** is made or **suit** is brought.

**8. Transfer of Rights of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after a loss to impair them. At our request, the insured will bring **suit** or transfer those rights to us and help us enforce them. Any recovery will be paid first to us until all amounts we have spent on a **claim** or **suit** have been reimbursed. The insured expressly waives the right to be made whole by any such recovery.

# COMMUNICATIONS LIABILITY PROTECTION COVERAGE FORM

**THIS FORM PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS. PLEASE READ THE ENTIRE FORM CAREFULLY.**

Read this entire coverage form carefully to determine rights, duties and what is and is not covered. Various provisions in this policy restrict coverage.

Throughout this coverage form, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under **Section II – WHO IS AN INSURED**.

Other words and phrases that appear in **bold** may have special meaning. Refer to **Section VII – DEFINITIONS**.

## SECTION I - COVERAGE

### 1. Insuring Agreement

- a. We will pay damages that the insured becomes legally obligated to pay arising out of your liability because of a **communications wrongful act**. We will have the right and duty to defend the insured against **suits** seeking covered damages. However, we will have no duty to defend the insured for **suits** to which this insurance does not apply. We may, at our discretion, investigate any **claim** based on an alleged **communications wrongful act**. But:
  - (1) Both the amount we will pay for damages and the amount we will pay in **defense costs** are limited as described in **Section III - LIMITS OF INSURANCE** and **Section V - DEDUCTIBLE**; and
  - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in payment of judgments, settlements or **defense costs**. No other obligation or liability to pay sums or perform acts or services is covered.
- b. This insurance applies to **claims** for damages first made against an insured during the policy period and reported to us during the policy period or any Extended Reporting Period we provide under **Section VI – EXTENDED REPORTING PERIODS** caused by a **communications wrongful act** if:
  - (1) The **claim** arises out of a **communications wrongful act** that takes place in the **Coverage territory**; and
  - (2) The **communications wrongful act** takes place:
    - (a) After the Retroactive Date, if any, shown in the Declarations; and
    - (b) Before the end of the policy period.

Each **communications wrongful act** in a series of related **communications wrongful acts** will be deemed to have been committed on the date the first **communications wrongful act** in a series of **communications wrongful acts** is committed. The first **communications wrongful act** in a **series of related communications wrongful acts** must take place after the Retroactive Date, if any, shown in the Declarations, and before the end of the policy period for this insurance to apply.
- c. A **claim** by a person or organization seeking damages will be deemed to have been made at the earlier of the following times:
  - (1) When notice of such **claim** is received by any insured or by us, whichever comes first; or;
  - (2) If notice of a **communications wrongful act** is provided pursuant to **SECTION VIII - CONDITIONS** and a **claim** based on that **communications wrongful acts** is subsequently made, the date we receive written notice of such **communications wrongful act**.

If multiple **claims** result from the same **communications wrongful act**, or **series of related communications wrongful acts**, all such **claims** will be deemed to have been made on the date the first of those **claims** is made.

## 2. Exclusions

This insurance does not apply to any **claim** based upon, arising out of or in any way related to:

### a. Assumed Liability

Liability assumed by any insured under any contract or agreement. This exclusion does not apply to:

- (1) Liability for damages that the insured would have had in the absence of the contract or agreement; or
- (2) Liability assumed in a contract or agreement provided that the damages, to which this insurance applies, are caused by **communications wrongful acts** first committed by you or on your behalf after the execution of such contract or agreement.

### b. Bodily Injury or Property Damage

- (1) Bodily injury, sickness, disease, mental anguish, mental injury, humiliation, shock, loss of services or death; or
- (2) Physical injury to tangible property whether or not owned by any insured, including all resulting loss of use of that property. Tangible property does not include data.

### c. Computer Code or Software

- (1) Any **communications wrongful act** involving software, its source code, or any other content of a software program; or
- (2) piracy of computer code or a software product.

### d. Dishonest Acts

Any actual or alleged dishonest act, including fraudulent, criminal or malicious acts, by an insured.

### e. Economic Injury

Any loss of income, loss of profits, monetary value of lost market share, loss of goodwill, or damage to business reputation.

### f. False Information

Any information that is inaccurate, misleading, or untruthful.

### g. Fines or Penalties

Any fines or penalties imposed by law.

### h. Insured versus Insured

Any claim against an insured that is brought by, or on behalf of, any insured.

### i. Intentional Infringement

Any actual or alleged intentional infringement by an insured.

### j. Multiplied Damages

Any multiple portion of any multiplied damages award.

### k. Nuclear Energy

The furnishing by an insured of services, products, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**.

### l. Patent and Trade Secrets

Any actual or alleged infringement, violation, rights or laws, or misappropriation relating to any of the following:

- (1) patent; or
- (2) trade secrets.

This exclusion applies to all **claims** or **suits** that allege infringement, violation, rights or laws, or misappropriation of patent or trade secrets regardless of other allegations that may be named in a **claim** or **suit**.

**m. Personal & Advertising Injury**

Injury, including consequential bodily injury, arising out of one or more of the following offenses:

- (1) False arrest, detention or imprisonment;
- (2) Malicious prosecution;
- (3) The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- (4) Libel or slander;
- (5) Oral or written publication, in any manner, of material that disparages a person's or organization's goods, products or services;
- (6) Oral or written publication, in any manner, of material that violates a person's right of privacy.
- (7) The use of another's advertising idea in your **advertisement**; or
- (8) Infringing upon another's copyright, trade dress or slogan in your **advertisement**.

**n. Pollution**

- (1) The actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of pollutants.
- (2) Any request, demand or order issued or made pursuant to any environmental protection or environmental liability laws that you or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants.

Pollutants means one or more solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, mold(s), alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**o. Prior Knowledge or Reported Acts**

Any **communications wrongful act** the insured had knowledge of or any **communications wrongful act** that has been reported to another insurance company prior to effective date of this policy period.

**p. Violation of Statutes Governing Methods of Sending Material or Information**

Any distribution of material that violated or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating, or distribution of material or information.

**q. Violation of Trade Law**

Any actual or alleged violation of any law relating to anti-trust, restraint of trade, unfair trade practices, false or deceptive advertising or any other law protecting competition or consumers.

**SECTION II – WHO IS AN INSURED**

**1. If you are designated in the Declarations as:**

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture, or limited liability company, you are an insured. Your **executive officers** and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

**2. Each of the following is also an insured:**

- a. Your **employees**, other than either your **executive officers** (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture, or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

1. The Limit of Insurance shown in the Declarations for this coverage and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. **Claims** made; or
  - c. Persons or organizations making **claims**.

2. The Limit of Insurance stated as the Annual Aggregate Limit is the most we will pay for the sum of:
  - a. Damages for any **claim(s)**; and
  - b. **Defense costs** for any **claim(s)** seeking damages payable under **a.** above.

Each payment we make for such damages or **defense costs** reduces the limit available under the Annual Aggregate Limit by the amount of such payment. This reduced limit will then be the Annual Aggregate Limit of Insurance available. When this Annual Aggregate Limit of Insurance is used up, we shall have no further obligation to defend **claim(s)** seeking such damage or pay such damages or **defense costs**.

The Annual Aggregate Limit of Insurance applies separately to each consecutive annual period, and to any remaining period of less than 12 months, starting with the beginning of the policy shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Annual Aggregate Limit of Insurance.

3. Subject to **2.** above, the most we will pay for each **claim**, including **defense costs** for that claim, is the Per Claim Limit of Insurance stated in the Declarations. However, we will not pay until the **claim**, including damages and **defense costs**, exceeds the Deductible, and then we will pay only the amount in excess of the Deductible.
4. For the purpose of the application of any Limit of Insurance, regardless of the number of insureds or claimants involved, all **claims** arising from a **communications wrongful act** or a **series of related communication wrongful acts** shall be deemed to be a single **claim**.
5. This insurance applies separately to each insured against whom a **claim** is made. However, the Limits of Insurance are not increased by the number of insureds under the policy.

### SECTION IV - SUPPLEMENTARY PAYMENTS

1. We will pay, with respect to any **claim** we investigate or settle, or any **suit** against an insured we defend:
  - a. All expenses other than **defense costs** we incur.
  - b. the cost of bonds to release attachments, but only for bond amounts within the applicable Limit of Insurance. We do not have to furnish these bonds.
  - c. All costs, not including **defense costs**, taxed against the insured in a **suit**.
  - d. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance to resolve a claim, we will not pay any prejudgment interest accrued after the offer.
  - e. All interest on the full covered amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Insurance.
2. These payments will not reduce the Limits of insurance. Our obligation to make these payments ends when we have used up the applicable Limits of Insurance.

## SECTION V - DEDUCTIBLE

1. Your Deductible is the amount shown in the Declarations and applies to each **claim**.
2. For the purpose of the application of the Deductible, regardless of the number of insureds or claimants involved, all **claims** arising from a **communications wrongful act** or a **series of related communications wrongful acts** shall be deemed to be a single **claim**. Your deductible applies to any payment we make for damages, **defense costs** or Supplementary Payments.
3. We may pay any part or all of the Deductible to settle any **claim**. When we notify you of such payment, you will reimburse us as soon as practicable for such part of the Deductible we paid.

## SECTION VI - EXTENDED REPORTING PERIODS

1. We will provide one or more Extended Reporting Periods, as described below, if:
  - a. This Coverage Part is canceled or not renewed for any reason except non-payment of the premium; or
  - b. We renew or replace this Coverage Part with insurance that:
    - (1) Has a Retroactive Date later than the date shown in the Declarations of this Coverage Part; or
    - (2) Does not apply to **communications wrongful act** on a claims-made basis.
2. Extended Reporting Periods do not extend the policy period or change the scope of coverage provided. They apply only to **claims** for **communications wrongful acts** that take place after the Retroactive Date, if any, shown in the Declarations and before the end of the policy period. Once in effect, Extended Reporting Periods may not be canceled.
3. A Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the policy period and lasts for 60 days after the end of the policy period.

The Basic Extended Reporting Period does not apply to **claims** that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such **claims**.

4. A Supplemental Extended Reporting Period is available for terms of 60 months or unlimited duration, but only by an endorsement and for an extra charge. This supplemental period starts 60 days after the end of the policy period.

You must give us a written request for the endorsement, specifying which term is desired, within 60 days after the end of the policy period. The Supplemental Extended Reporting Period will not go into effect unless the insured pays the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

- a. The exposures insured;
- b. Previous types and amounts of insurance;
- c. Limits of Insurance available under this Coverage Part for future payments of damages; and
- d. Other related factors.

The additional premium will not exceed 200% of the annual premium for this Coverage Part.

The endorsement shall set forth the terms, not inconsistent with this Section, applicable to the Supplemental Extended Reporting Period.

The Supplemental Extended Reporting Period does not apply to **claims** that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such **claims**.

5. Extended Reporting Periods do not reinstate or increase the Limits of Insurance applicable to any **claim** to which this coverage form applies.
6. If we cancel or non-renew this coverage form, we will include with the notice of cancellation or non-renewal a Notice To Our Policyholder in which we will advise the insured of the availability of the Supplemental Extended Reporting Period, the additional premium charge of the Supplemental Extended Reporting Period and the importance of purchasing the Supplemental Extended Reporting Period option.

If the insured cancels or non-renews this coverage form or if we agree to renew subject to specific conditions; we will provide the insured with the Notice To Our Policyholder described above within 30 days of the effective date of policy termination or conditional renewal.

## SECTION VII – DEFINITIONS

1. **Advertisement** means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purpose of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Only that part of a web-site about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
3. **Claim** means any written demand for money or services, **suit**, or threat to institute a **suit** based on an actual or alleged **communications wrongful act**.
4. **Communications wrongful act** means the following committed by you in the conduct of your business:
  - a. Infringement of copyright, trademark, trade name, trade dress, service mark, service name, symbol, title, logo or slogan; or
  - b. violation of a person's or organization's right of publicity.
5. **Coverage territory** means anywhere in the world. However, the insured's responsibility to pay damages must be determined in a settlement we agree to or in a suit on the merits brought within the United States of America (including its territories and possessions), Puerto Rico or Canada.
6. **Defense costs** means fees incurred by an attorney we designate; and all other reasonable fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **claim** or **suit**. Such fees, costs and expenses must be incurred by us; an attorney we designate; or by the insured with our consent. **Defense costs** includes up to \$1,500 per day in actual lost earnings incurred by the insured due to time taken off from work at our request and in support of our investigation, adjustment or defense or appeal of a **claim** or **suit**.
7. **Employee** includes a **leased worker**. **Employee** does not include a **temporary worker**.
8. **Executive officer** means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
9. **Leased worker** means a person leased to you by a labor leasing firm, under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. **Leased worker** does not include a **temporary worker**.
10. **Nuclear facility** means:
  - a. Any **nuclear reactor**;
  - b. Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste;
  - c. Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combinations thereof, or more than 250 grams of uranium 235;
  - d. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of, waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.
11. **Nuclear reactor** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
12. **Series of related communication wrongful acts** means two or more **communications wrongful acts** that have a common connection by reason of fact, circumstance, transaction or event.
13. **Suit** means a civil proceeding seeking damages based on an alleged **communications wrongful act** to which this insurance applies. **Suit** includes:



- a. An arbitration proceeding in which such damages are alleged to which you must submit, or one to which you may submit with our consent.
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

**14. Temporary worker** means a person who is furnished to you to substitute for a permanent **employee** on leave or to meet seasonal or short-term workload conditions.

## SECTION VIII - CONDITIONS

The following conditions apply in addition to the Common Policy Conditions. In case of conflict between these conditions and the Common Policy Conditions, these conditions shall apply as respects this Coverage Part.

### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

### 2. Duties in the Event of a Communications Wrongful Act, Claim, or Suit

- a. You must see to it that we are notified as soon as practicable of a **communications wrongful act** which may result in a **claim** or **suit**. The notice must include:

- (1) How, when and where the **communications wrongful act** took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any damage arising out of the **communications wrongful act**.

Notice of a **communications wrongful act** is not notice of a **claim**. However, any **claim** resulting from the circumstances described in a notice of a **communications wrongful act** will be deemed to have been made on the date we receive such notice.

- b. If a **claim** is made or **suit** is brought against any insured, you must:
  - (1) Immediately record the specifics of the **claim** or **suit** and the date received;
  - (2) You must see to it that we receive written notice of the **claim** or **suit** as soon as practicable;
  - (3) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **claim** or **suit**;
  - (4) Authorize us to obtain records and other information relating to the **claim** or **suit**;
  - (5) Cooperate with us in the investigation, settlement or defense of the **claim** or **suit**; and
  - (6) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured for the covered damages which we paid in the **claim** or **suit** to which this insurance may also apply.
- c. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, incur any expense, or settle any **claim** or **suit**, without our consent.

### 3. Legal Action Against Us

No person or organization has a right under this coverage form:

- a. To join us as a party or otherwise bring us into a **suit** asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial, but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

#### a. Excess Insurance

This insurance is excess over any other collectible insurance, whether primary, excess, contingent or on any other basis, including insurance that is effective prior to the beginning of the policy period shown in the Declarations of this insurance and applies to a **communications wrongful act** on other than a claims-made basis.

We will have no duty to defend the insured against any **claim** or **suit** if any other insurer has a duty to defend the insured against that **claim** or **suit**. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

We will pay only our share of the amount of the **claim** or **suit**, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining amount, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**b. Non Accumulation of Limits**

If this Coverage Form and any other Coverage Form or policy issued to you by us, or any company affiliated with us, apply to the same **claim**, the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this coverage form.

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations, documentation, data and other material you have furnished us.

**7. Separation of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom **claim** is made or **suit** is brought.

**8. Transfer of Rights of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after a loss to impair them. At our request, the insured will bring **suit** or transfer those rights to us and help us enforce them. Any recovery will be paid first to us until all amounts we have spent on a **claim** or **suit** have been reimbursed. The insured expressly waives the right to be made whole by any such recovery.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## SUPPLEMENTAL EXTENDED REPORTING PERIOD

This endorsement modifies insurance provided under the following:

TECHNOLOGY ERRORS OR OMISSIONS COVERAGE FORM  
MANUFACTURING ERRORS OR OMISSIONS COVERAGE FORM  
COMMUNICATIONS LIABILITY PROTECTION COVERAGE FORM  
DATA PRIVACY LIABILITY PROTECTION COVERAGE FORM

**THIS ENDORSEMENT DOES NOT REINSTATE THE ANNUAL AGGREGATE LIMIT OF INSURANCE.**

Named Insured: \_\_\_\_\_

Policy Number: \_\_\_\_\_ Endorsement Additional Premium: \_\_\_\_\_

Endorsement Effective Date: \_\_\_\_\_ Duration of SERP: \_\_\_\_\_

(If the above fields are not completed, refer to the Declarations for the applicable information.)

A Supplemental Extended Reporting Period as described in the **Extended Reporting Periods Section** of the policy is provided for a period of 60 months or of unlimited duration, whichever is stated above. This Supplemental Extended Reporting Period begins sixty (60) days after the end of the policy period.

The coverage provided by this endorsement is excess over any other valid and collectible insurance available to the insured, whether primary, excess, contingent or on any other basis, whose policy period begins or continues after the Supplemental Extended Reporting Period begins.

This endorsement shall not take effect until all additional premiums stated above have been paid in full when due. Once paid in full, this endorsement may not be canceled.

**The undersigned Named Insured understands the provisions of this endorsement and is aware that the Limits of Insurance are not reinstated by this endorsement.**

Signed \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## UNAUTHORIZED ACCESS

This endorsement modifies the insurance provided under the following:

TECHNOLOGY ERRORS OR OMISSIONS COVERAGE FORM

Section I – **COVERAGE**, paragraph 2. **Exclusions**, subparagraph q. is deleted and replaced by the following:

### **Unauthorized Access**

This insurance does not apply to any **claim** arising out of the failure to prevent unauthorized access to, or use of any computer, software, network, or electronic information system.

This exclusion does not apply to **claims** resulting from the failure of **your technology offerings** to function or serve the purpose intended.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## Total Intellectual Property Exclusion

This endorsement modifies the insurance provided under the following:

TECHNOLOGY ERRORS OR OMISSIONS COVERAGE FORM

Section **I – COVERAGE**, paragraph **2. Exclusions**, subparagraph **j.** is deleted and replaced by the following:

### Intellectual Property

Any actual or alleged infringement of copyright, trade dress, trade secret, trade name, trademark or patent; unfair competition or piracy; misappropriation or wrongful taking of concepts or any other violation or infringement of any other intellectual property right.

This exclusion applies regardless of whether this insurance would otherwise apply to all or part of any such actual or alleged injury or damage in the absence of any such actual or alleged assertion, infringement, or violation.

## ARKANSAS CHANGES

This endorsement modifies insurance provided under the following:

TECHNOLOGY ERRORS OR OMISSIONS COVERAGE FORM  
COMMUNICATIONS LIABILITY PROTECTION COVERAGE FORM  
DATA PRIVACY LIABILITY PROTECTION COVERAGE FORM

**A. Section VI – Extended Reporting Periods**, paragraph **1.a.** is replaced by the following:

1. We will provide one or more Extended Reporting Periods, as described below, if:
  - a. This Coverage Part is canceled or not renewed for any reason; or

**B. Section VI – Extended Reporting Periods**, paragraph **5.** is replaced by the following:

5. Extended Reporting Periods do not reinstate or increase the Limits of Insurance applicable to any **claim** to which this Coverage Part applies, except to the extent described in paragraph **7.** of this Section.

**C. The following paragraph is added to Section VI – Extended Reporting Periods:**

7. If the supplemental extended reporting period is in effect, we will provide a separate Aggregate Limit of Insurance no less than the greater of:
  - a. The amount of coverage remaining in the expiring policy's aggregate; or
  - b. Fifty percent (50%) of the expiring policy's aggregate limit at inception.

This separate Aggregate Limit of Insurance applies only to **claims** first received and recorded during the supplemental extended reporting period.

## @VANTAGE FOR GENERAL LIABILITY TECHNOLOGY COMPANIES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The following schedule lists the coverage extensions provided by this endorsement. Refer to the individual provisions to determine the extent of your coverage.

### SCHEDULE OF COVERAGE EXTENSIONS

- |   |   |
|---|---|
| 1. Additional Insured - Broad Form Vendors  | 8. Coverage Territory – Worldwide               |
| 2. Additional Insured – by Contract, Agreement or Permit relating to: <ul style="list-style-type: none"><li>o Work performed by you</li><li>o Premises you own, rent, lease or occupy</li><li>o Equipment you lease</li></ul> | 9. Duties in Event of Occurrence, Claim or Suit |
| 3. Aggregate Limit Per Location   | 10. Expected or Intended Injury (PD)            |
| 4. Blanket Waiver of Subrogation  | 11. Medical Payments                            |
| 5. Bodily Injury Redefined- Mental Anguish  | 12. Mobile Equipment Redefined                  |
| 6. Broadened Named Insured  | 13. Newly Acquired or Formed Organizations      |
| 7. Broadened Property Damage <ul style="list-style-type: none"><li>o Borrowed Equipment</li><li>o Customers' Goods</li><li>o Use of Elevators</li></ul>   | 14. Non-Owned Aircraft                          |
|   | 15. Non-Owned Watercraft                        |
|   | 16. Personal and Advertising Injury             |
|   | 17. Product Recall Expense                      |
|   | 18. Supplementary Payments Increased Limits     |

#### 1. ADDITIONAL INSURED - BROAD FORM VENDORS

**Section II - Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) (referred to below as vendor) with whom you agreed in a written contract or agreement to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

a. This provision 1. does not apply to:

- (1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (2) Any express warranty unauthorized by you;
- (3) Any physical or chemical change in the product made intentionally by the vendor;
- (4) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (5) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (a) The exceptions contained in Subparagraphs 4. or 6.; or
  - (b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (9) Any person or organization if the “products-completed operations hazard” is excluded either by the provisions of the Coverage Form or by endorsement.
- b. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

## 2. ADDITIONAL INSURED – CONTRACT, AGREEMENT OR PERMIT

- a. **Section II - Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) with whom you agreed in a written contract, written agreement or permit to provide insurance such as is afforded under this Coverage Part, but only with respect to liability for “bodily injury”, “property damage” or “personal and advertising injury” caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- 1. In the performance of “your work” for the additional insured(s) at the location designated in the contract, agreement or permit; or
  - 2. In the maintenance, operation or use of equipment leased to you by such person(s) or organization(s), or
  - 3. In connection with premises you own, rent, lease or occupy.
- This insurance applies on a primary or primary and non-contributory basis if that is required in writing by the contract, agreement or permit.
- b. The insurance provided to the additional insured herein is limited. This insurance does not apply:
- 1. Unless
    - (a) the written contract, agreement or permit is currently in effect or becomes effective during the term of this policy; and
    - (b) the contract or agreement was executed or permit issued prior to the “bodily injury”, “property damage”, or “personal and advertising injury”;
  - 2. To any person or organization included as an insured under the Additional Insured - Broad Form Vendors provision of this endorsement;
  - 3. To any person or organization included as an insured by an endorsement issued by us and made part of this Coverage Part;
  - 4. To any person or organization if the “bodily injury”, “property damage”, or “personal and advertising injury” arises out of the rendering of or failure to render any professional architectural, engineering or surveying services by or for you including:
    - (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
    - (b) Supervisory, inspection, architectural or engineering activities.
  - 5. To any:
    - (a) Lessor of equipment after the equipment lease expires; or
    - (b) Owners or other interests from whom land has been leased; or
    - (c) Managers or lessors of premises if:
      - (1) The “occurrence” takes place after you cease to be a tenant in that premises; or
      - (2) The “bodily injury”, “property damage”, “personal and advertising injury” arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
  - 6. To “bodily injury, or “property damage” occurring after:



- (a) All work on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured at the site of the covered operations has been completed; or
  - (b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project.
- c. **Limits of Insurance** applicable to the additional insured are those specified in the contract, agreement or permit or in the Declarations of this policy, whichever is less, and fix the most we will pay regardless of the number of:
- 1. Insureds;
  - 2. Claims made or "suits" brought; or
  - 3. Persons or organizations making claims or bringing "suits".

These Limits of Insurance are inclusive of and not in addition to the Limits of Insurance shown in the Declarations.

### 3. AGGREGATE LIMIT PER LOCATION

- a. Under **Section III – Limits of Insurance**, the General Aggregate Limit applies separately to each of your "locations" owned by or rented or leased to you.
- b. Under **Section V – Definitions**, the following definition is added:

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

### 4. BLANKET WAIVER OF SUBROGATION

**Section IV - Transfer of Rights of Recovery Against Others to Us** Condition is amended to add the following:

We will waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations done under a written contract or agreement with that person or organization and included in "your work" or the "products-completed operations hazard". This waiver applies only to persons or organizations with whom you have a written contract, executed prior to the "bodily injury" or "property damage", that requires you to waive your rights of recovery.

### 5. BODILY INJURY REDEFINED – MENTAL ANGUISH

Under **Section V** the definition of "bodily injury" is replaced by the following:

"Bodily injury" means bodily injury, sickness, or disease sustained by a person, including mental anguish or death resulting from any of these at any time.

### 6. BROADENED NAMED INSURED

**Section II - Who Is An Insured** is amended to include as an insured the following:

Any organization which is a legally incorporated entity in which you own a financial interest of more than 50 percent of the voting stock on the effective date of this endorsement will be a Named Insured until the 180<sup>th</sup> day or the end of the policy period, whichever comes first, provided there is no other similar insurance available to that organization.

The insurance afforded herein does not apply to any entity which is also an insured under another policy or would be an insured under such policy but for its termination or the exhaustion of its limits of insurance.

### 7. BROADENED PROPERTY DAMAGE – BORROWED EQUIPMENT, CUSTOMERS' GOODS AND USE OF ELEVATORS

The insurance for "property damage" liability is subject to the following:

- a. The **Damage To Property** exclusion under **Section I Coverage A** is amended as follows:
  - 1. The exclusion for personal property in the care, custody or control of the insured does not apply to “property damage” to equipment you borrow while at a job site and provided it is not being used by anyone to perform operations at the time of loss.
  - 2. The exclusions for
    - (a) Property loaned to you;
    - (b) Personal property in the care, custody or control of the insured; and
    - (c) That particular part of any property that must be restored , repaired or replaced because “your work” was incorrectly performed on it
 do not apply to “property damage” to “customers’ goods” while on your premises nor do they apply to “property damage” arising from the use of elevators at premises you own, rent, lease or occupy.  
 Subject to the Each Occurrence Limit, the most we will pay for “property damage” to “Customers’ Goods” is \$25,000 per “occurrence”.
- b. Under **Section V – Definitions**, the following definition is added:
 

“Customers’ Goods” means goods of your customer on your premises for the purpose of being:

  - 1. Repaired; or
  - 2. Used in your manufacturing process.
- c. The insurance afforded by this provision is excess over any other valid and collectible property insurance (including any deductible) available to the insured whether such insurance is primary, excess, contingent or on any other basis. Any payments by us will follow the Other Insurance – Excess provisions in the COMMERCIAL GENERAL LIABILITY CONDITIONS.

## 8. COVERAGE TERRITORY - WORLDWIDE

The definition of “coverage territory” is replaced by the following:

“Coverage territory” means anywhere. However, the insured’s responsibility to pay damages must be determined in a settlement we agree to or in a “suit” on the merits brought within the United States of America (including its territories and possessions), Puerto Rico or Canada.

## 9. DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

**Section IV - Duties In The Event Of Occurrence, Claim or Suit** is amended by adding the following paragraphs:

- a. The requirements that you must
  - 1. notify us of an “occurrence” offense, claim or “suit” and
  - 2. send us documents concerning a claim or “suit”
 apply only when such “accident” claim, “suit” or “loss” is known to:
  - 1. You, if you are an individual;
  - 2. A partner, if you are a partnership;
  - 3. An executive officer of the corporation or insurance manager, if you are a corporation; or
  - 4. A manager, if you are a limited liability company.
- b. The requirement that you must notify us as soon as practicable of an “occurrence” or an offense that may result in a claim does not apply if you report an “occurrence” to your workers compensation insurer which later develops into a liability claim for which coverage is provided by this policy. However, as soon as you have definite knowledge that the particular “occurrence” is a liability claim rather than a workers compensation claim, you must comply with the **Duties In The Event Of Occurrence, Offense, Claim Or Suit Condition**.

## 10. EXPECTED OR INTENDED INJURY (PROPERTY DAMAGE)

The **Expected Or Intended Injury** exclusion under **Coverage A Bodily Injury and Property Damage** is replaced by:

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

#### **11. MEDICAL PAYMENTS - INCREASED LIMITS AND TIME PERIOD**

- a. In the Insuring Agreement under Coverage **C Medical Payments**, the requirement that expenses are incurred and reported to us within one year of the date of the accident is changed to three years.
- b. The Medical Expense Limit is \$10,000 per person or the amount shown in the Declarations as the Medical Expense Limit, whichever is greater.
- c. This provision **11.** does not apply if Coverage **C - Medical Payments** is otherwise excluded either by the provisions of the Coverage Form or by endorsement.

#### **12. MOBILE EQUIPMENT - SELF-PROPELLED SNOW REMOVAL, ROAD MAINTENANCE AND STREET CLEANING EQUIPMENT**

The following is added to the "mobile equipment" definition:

Vehicles maintained primarily for purposes other than the transportation of persons or cargo that are self-propelled vehicles of less than 1,000 pounds gross vehicle weight with the following types of permanently attached equipment will be considered "mobile equipment":

- a. Snow removal;
- b. Road maintenance, but not construction or resurfacing; or
- c. Street cleaning.

#### **13. NEWLY FORMED OR ACQUIRED ORGANIZATIONS**

Under **Section II - Who Is An Insured**, the time period limitation for newly acquired or formed organizations is replaced by:

Coverage under this provision is afforded only until the end of the current policy period.

#### **14. NON-OWNED AIRCRAFT**

- a. The **Aircraft, Auto Or Watercraft** exclusion under Coverage **A Bodily Injury And Property Damage Liability** does not apply to an aircraft that is:
  - 1 Hired, chartered or loaned with a paid crew; and
  - 2 Not owned by any insured.
- b. The insurance afforded by this provision **14.** is excess over any other valid and collectible insurance (including any deductible or Self Insured Retention) available to the insured, whether such insurance is primary, excess, contingent or on any other basis. Any payments by us will follow the Other Insurance - Excess Insurance provisions in the COMMERCIAL GENERAL LIABILITY CONDITIONS.

#### **15. NON-OWNED WATERCRAFT**

- a. **Section II - Who Is An Insured** is amended to include as an insured for any watercraft that is covered by this policy, any person who, with your expressed or implied consent, either uses or is responsible for the use of a watercraft. However, no person or organization is an insured with respect to:
  - 1. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
  - 2. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.
- b. In the exception to the **Aircraft, Auto Or Watercraft** exclusion under **Coverage A Bodily Injury And Property Damage Liability**, the limitation on the length of a watercraft is increased to 51 feet.
- c. The insurance afforded by this provision **15.** is excess over any other valid and collectible insurance (including any deductible or Self Insured Retention) available to the insured, whether such insurance is primary, excess,

contingent or on any other basis. Any payments by us will follow the Other Insurance - Excess Insurance provisions in the COMMERCIAL GENERAL LIABILITY CONDITIONS.

## 16. PERSONAL AND ADVERTISING INJURY

The following exclusions under the definition of “personal and advertising injury” are amended as follows:

### a. Insureds In Media Type Businesses

“Personal and advertising injury” committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting; or
- (2) Designing or developing content of websites for others.

However, this exclusion does not apply to paragraphs **14 a., b. and c.** of “personal and advertising injury” under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

### b. Electronic Chatrooms Or Bulletin Boards

“Personal and advertising injury” arising out of an electronic chatroom or bulletin board the insured hosts, owns, or maintains for others.

## 17. PRODUCT RECALL EXPENSE

a. With respect to this Provision **17.**, the **Recall Of Products, Work Or Impaired Property** exclusion under **Coverage A Bodily Injury And Property Damage Liability** is deleted.

b. The following is added to **Section III - Limits Of Insurance** section:

1. The Limits of Insurance shown in the Product Recall Schedule and rules below fix the most we will pay regardless of the number of
  - (a) Insureds;
  - (b) “Covered recalls” initiated; or
  - (c) Number of “your products” recalled.
2. The Product Recall Aggregate Limit is the most we will reimburse you for the sum of all “product recall expenses” incurred for all “covered recalls” initiated during the policy period.
3. Subject to **2.** above, the Each Product Recall Limit is the most we will reimburse you for the sum of all “product recall expenses” arising out of any one “covered recall” for the same defect or deficiency.

Products Recall Schedule	
	Limits of Insurance
Product Recall Aggregate Limit	\$50,000
Each Product Recall Limit	\$25,000

The Limits of Insurance for this coverage apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for the purposes of determining the Limits of Insurance.

- c. The following is added to the **Duties In The Event Of Occurrence, Offense, Claim Or Suit** provision under **Section IV - Conditions**:

You must see to it that the following are done in the event of an actual or anticipated "covered recall" that may result in "product recall expense":

1. Give us prompt notice of any discovery or notification that "your product" must be withdrawn or recalled. Include a description of "your product" and the reason for the withdrawal or recall;
2. Cease any further release, shipment, consignment or any other method of distribution of like or similar products until it has been determined that all such products are free from defects that could be a cause of loss under this insurance;
3. As often as may be reasonably required, permit us to inspect "your product" that demonstrates the need for the "covered recall" and permit us to examine your books and records. Also permit us to take damaged and undamaged samples of "your products" for inspection, testing and analysis; and permit us to make copies from your books and records;
4. Send us a signed, sworn, proof of loss containing the information we requested to settle the claim. You must do this within 60 days after our request. We will supply you with the necessary forms; and
5. Permit us to examine any insured under oath, while not in the presence of any other insured and at such times as may reasonably be required, about any matter relating to this insurance or your claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

- d. The following definitions are added to the Definitions Section:

1. "Covered recall" means a recall made necessary because the insured or a government body has determined that a known or suspected defect, deficiency, inadequacy or dangerous condition in "your product" has resulted in or will result in "bodily injury" or "property damage".
2. "Product Recall Expense" means:
  - (a) The following necessary and reasonable expenses you incur exclusively for the purpose of recalling "your product":
    - (1) For communications, including radio or television announcements or printed advertisements including stationery, envelopes and postage;
    - (2) For shipping the recalled products from any purchaser, distributor or user to the place or places designated by you;
    - (3) For remuneration paid to your regular "employees" for necessary overtime;
    - (4) For hiring additional persons, other than your regular "employees";
    - (5) Incurred by "employees", including transportation and accommodations;
    - (6) To rent additional warehouse or storage space; or
    - (7) For disposal of "your products", but only to the extent that specific methods of destruction other than those employed for trash discarding or disposal are required to avoid "bodily injury" or "property damage" as a result of such disposal, but

"product recall expenses" does not include costs of regaining your market share, goodwill, revenue or profit.

- (b) "Product Recall Expense" does not include any expenses resulting from:

- (1) Failure of any product to accomplish its intended purpose;
- (2) Breach of warranties of fitness, quality, durability or performance;
- (3) Loss of customer approval, or any cost incurred to regain customer approval;
- (4) Redistribution or replacement of "your product" which has been recalled by like products or substitutes;

- (5) Caprice or whim of the insured;
- (6) A condition likely to cause loss of which any insured knew or had reason to know at the inception of this insurance; and
- (7) Recall of "your products" that have no known or suspected defect solely because a known or suspected defect in another of "your products" has been found

#### **18. SUPPLEMENTARY PAYMENTS - INCREASED LIMITS**

In the SUPPLEMENTARY PAYMENTS - Coverages **A** and **B** provision:

- a.** The limit for the cost of bail bonds is amended to \$2,500; and
- b.** The limit for reasonable expenses incurred by the "insured" is amended to \$500 a day.

<i>SERFF Tracking Number:</i>	<i>BEAC-125762051</i>	<i>State:</i>	<i>Arkansas</i>
<i>First Filing Company:</i>	<i>The Employers' Fire Insurance Company, ...</i>	<i>State Tracking Number:</i>	<i>EFT \$100</i>
<i>Company Tracking Number:</i>	<i>2008-GL-AR-FO-490</i>		
<i>TOI:</i>	<i>17.0 Other Liability - Claims Made/Occurrence</i>	<i>Sub-TOI:</i>	<i>17.0000 Other Liability Sub-TOI Combinations</i>
<i>Product Name:</i>	<i>@vantage 4 Tech</i>		
<i>Project Name/Number:</i>	<i>Tech Rates, Rules, and Forms /490</i>		

## Rate Information

Rate data does NOT apply to filing.

SERFF Tracking Number: BEAC-125762051 State: Arkansas  
First Filing Company: The Employers' Fire Insurance Company, ... State Tracking Number: EFT \$100  
Company Tracking Number: 2008-GL-AR-FO-490  
TOI: 17.0 Other Liability - Claims Made/Occurrence Sub-TOI: 17.0000 Other Liability Sub-TOI Combinations  
Product Name: @vantage 4 Tech  
Project Name/Number: Tech Rates, Rules, and Forms /490

## Supporting Document Schedules

**Satisfied -Name:** Uniform Transmittal Document-Property & Casualty  
**Review Status:** Approved 10/22/2008

**Comments:**

**Attachment:**

P&C Transmittal -AR FORM .pdf

**Satisfied -Name:** Explanatory Memorandums  
**Review Status:** Approved 10/22/2008

**Comments:**

**Attachments:**

2007 PL Forms Explanatory Memorandum.pdf

2007 GL Forms Explanatory Memorandum.pdf

AR forms EM supp.pdf

**Satisfied -Name:** Side by Side Mark Ups  
**Review Status:** Approved 10/22/2008

**Comments:**

**Attachments:**

APR 001 06 07mrkup.pdf

APR 206 06 07mrkup.pdf

APR 218 06 07 rev 01mrkup.pdf

APR 704 AR 06 07mrkup.pdf



## Property & Casualty Transmittal Document

<b>1. Reserved for Insurance Dept. Use Only</b>	<b>2. Insurance Department Use only</b> a. Date the filing is received: b. Analyst: c. Disposition: d. Date of disposition of the filing: e. Effective date of filing: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">New Business</div> <div style="width: 55%;"></div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">Renewal Business</div> <div style="width: 55%;"></div> </div> f. State Filing #: g. SERFF Filing #: h. Subject Codes
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<b>3.</b>	<b>Group Name</b>	<b>Group NAIC #</b>
	White Mountains Group	1129

<b>4.</b>	Company Name(s)	Domicile	NAIC #	FEIN #	State #
	Employers' Fire Insurance Company	MA	1129-20648	04-1288420	
	OneBeacon America Insurance Company	MA	1129-20621	04-2475442	

<b>5. Company Tracking Number</b>	<b>2008-GL-AR-FO-490</b>
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**Contact Info of Filer(s) or Corporate Officer(s)** [include toll-free number]

<b>6.</b>	Name and address	Title	Telephone #s	FAX #	e-mail
	Linda Jordan-Dow	Senior Compliance Specialist	781-332-7262	877-760-8032	ljordan-dow@onebeacom.com

<b>7.</b>	Signature of authorized filer	
<b>8.</b>	Please print name of authorized filer	Linda Jordan-Dow

**Filing information** (see General Instructions for descriptions of these fields)

<b>9.</b>	Type of Insurance (TOI)	Commercial Liability
<b>10.</b>	Sub-Type of Insurance (Sub-TOI)	All Commercial Liability Except Medical Malpractice
<b>11.</b>	State Specific Product code(s)(if applicable)[See State Specific Requirements]	
<b>12.</b>	Company Program Title (Marketing title)	@vantage 4 Tech
<b>13.</b>	Filing Type	<input type="checkbox"/> Rate/Loss Cost <input type="checkbox"/> Rules <input type="checkbox"/> Rates/Rules <input checked="" type="checkbox"/> Forms    11/15 <input type="checkbox"/> Combination Rates/Rules/Forms <input type="checkbox"/> Withdrawal <input type="checkbox"/> Other (give description)
<b>14.</b>	Effective Date(s) Requested	New: 11/15/08    Renewal: 11/15/08

**Property & Casualty Transmittal Document---**

15.	Reference Filing?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
16.	Reference Organization (if applicable)	
17.	Reference Organization # & Title	
18.	Company's Date of Filing	8/6/08
19.	Status of filing in domicile	<input type="checkbox"/> Not Filed <input checked="" type="checkbox"/> Pending <input type="checkbox"/> Authorized <input type="checkbox"/> Disapproved

20.	This filing transmittal is part of Company Tracking #	2008-GL-AR-FO-490
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21.	<b>Filing Description</b> [This area can be used in lieu of a cover letter or filing memorandum and is free-form text]
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On behalf of the captioned companies (the Companies), members of the OneBeacon Insurance Group, we hereby submit for your review and approval new and revised forms, endorsements applicable to the Companies @vantage program for Technology accounts. The Companies propose this filing be approved for applicable new and renewal policies effective on or after 1/15/08. The purpose of the filing is to institute the changes noted below to the Companies' @vantage program for Technology accounts.

### A. Forms and Endorsements:

## 1. Professional Liability Coverage-

- Revised Technology Errors and Omissions Coverage Form- APR 001
- New optional Data Privacy Liability Coverage Form – APR 009
- New optional Communication Liability Coverage Form- APR 010
- New optional endorsement Total Intellectual Property Exclusion- APR 222
- Revised Unauthorized Access Endorsement -APR 218

## 2. Commercial General Liability

New optional endorsement @vantage for General Liability Technology Companies-VCG 207

[illegible]

\*\*\*Refer to each state's checklist for additional state specific requirements (i.e. # of additional copies required, other state specific forms, etc.)

Effective March 1, 2007

**Filing Explanatory Memorandum**  
**2007 Technology Professional Liability Product**  
**@vantage For Forms and Endorsements Changes**

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We are making the following changes to our independent professional liability forms and endorsements in our @vantage Product:

**Part I - Coverage Forms**

- A. Revising Technology Errors or Omissions Coverage Form APR 001. The 03 06 edition is replaced by the 06 07 edition.
- B. Introducing new Technology coverage form, Data Privacy Protection Coverage APR 009 06 07
- C. Introducing new Technology coverage form, Communications Liability Protection Coverage APR 010 06 07.

**Part II - Multistate Endorsements**

- A. Revising Supplemental Extended Reporting Period endorsement APR 206. The 03 06 edition is replaced by the 06 07 edition.
- B. Revising Unauthorized Access endorsement APR 218. The 03 06 edition is replaced by the 06 07 edition.
- C. Introducing new endorsement Total Intellectual Property Exclusion APR 222 06 07.

The following is a summary of the changes.

**Part I – Coverage Forms**

- A. Technology Errors or Omissions Coverage Form APR 001 06 07** - Explanation of changes in the 06/2007 edition of Technology Errors or Omissions Coverage Form APR 001 which supersedes the previous 03 06 edition.

*1. Deletions*

- a. The Ceasing Support exclusion has been removed.
- b. The Financial Impairment exclusion has been removed.
- c. The Illegal Profits exclusion has been removed.

*2. Additions*

- a. An “Insured versus insured” exclusion (exclusion i) has been added. Coverage will not apply to claims brought by one insured against another insured.
- b. A “Prior Reported Claims” exclusion (exclusion n.) has been added to reinforce that the coverage will not apply to claims that were reported to another insurance company prior to the first effective date coverage was provided by us.
- c. The “Violation of Statutes Governing Methods of Sending Material or Information” exclusion (exclusion r.) has been added.
- d. Added definition for “Series of Related Errors or Omissions” (definition 12).

Note: Exclusions noted in a. and b. above are being added to clarify coverage intent. It has never been our intent to provide coverage for these exposures.

*3. Modifications*

- a. The insuring agreement is amended to clarify that each error or omission in a series of related errors or omissions will be deemed to have been committed on the date the first error or omission was committed and that it must take place after the retroactive date, if any, shown in the declarations and before the end of the policy period. This is in line with standard claims-made language.

- b. Dishonest Acts exclusion has been modified to include the words “committed by”. This is an editorial change for clarity.
- c. Intellectual Property exclusion has been modified by changing the last sentence to add “violation” .or “infringement of”: any other intellectual property right. The words were inserted to clarify our intent. There is no coverage impact.
- d. The Personal and Advertising Injury exclusion has been modified to separate Libel and Slander offense from Oral or Written Publication of material that disparages a person’s or organization’s goods, products or services. This exclusion has been restated to improve clarity and readability. There is no coverage impact.
- e. Unauthorized Access exclusion has been restated to improve clarity and readability. There is no coverage impact.
- f. Under Supplementary Payments Section IV, editorial revisions were made to Paragraph d. to improve clarity and readability. There is no coverage impact.
- g. The last sentence of the defined term “defense costs” was removed. Defense costs no longer include our overhead and salary of our regular employees other than attorneys of record who are our employees. Other minor editorial revisions were also made.
- h. The definition of “employees” was changed to “employee” to correct a typographical error.
- i. The definition of “Error or Omission” has been clarified to mean that it must occur in the conduct of the insured’s business.
- j. The definition of “Suit” is amended to add clarity to the meaning of arbitration proceeding that would be included as a civil proceeding under the definition.
- k. Condition **2. b.** Duties in the Event of Error or Omission, Claim or Suit has been restated and re-punctuated to improve clarity and readability. There is no coverage impact.
- l. The Other Insurance (condition 4.) has been amended to remove Method of Sharing provision (paragraph b.). The “excess” and “non-accumulation of limits” provisions continue to apply.
- m. Transfer of Rights of Recovery Against Others To Us condition is amended to add language that any recovery will be paid first to us until all amounts we have spent on a claim or suit have been reimbursed and that the insured expressly waives the right to be made whole by any such recovery.

#### **B. Data Privacy Liability Protection Coverage Form APR 009 06 07**

We are introducing a new optional coverage form entitled Data Privacy Liability Protection Coverage Form under our Technology business segment. This form will provide coverage for damages resulting from claims arising out of the failure of the insured to protect the private data of others.

Features of this new Coverage Form include:

- Claims-made coverage form with defense costs included within limits.
- Covers wrongful acts defined as failure to protect the data of others
- The wrongful act must take place after the retroactive date
- A deductible will apply.
- Automatic Extended Reporting Period of 60 days.
- Supplemental Extended Reporting Period of 5 years or unlimited duration for an additional premium
- Unique terms defined in the policy include “Private Data”, “Wrongful Acts” and “Series of Related Wrongful Acts”

The following is a description of the main provisions of the new Data Privacy Liability Protection Coverage Form.

## **SECTION I - COVERAGE**

### **Insuring Agreement**

This form provides coverage for claims resulting from the failure of the insured to protect the private data of others. Coverage will apply only if the loss is caused by a “wrongful act”, takes place in the coverage territory, and was not committed before the retroactive date or after the end of the policy period.

As noted, this coverage is provided on a claims-made basis. Therefore, a claim for damages must first be made during the policy period or during an Extended Reporting Period, if provided.

A claim will be deemed to have been made either when notice of such claim is received by the insured or us, whichever comes first. All claims shall be deemed to have been made at the time the first of those claims is made against any insured. Claims will be considered to have been received within the policy period if they are received and recorded by the insured within 60 days after the end of the policy period and no other insurance applies to such claim.

### **Exclusions**

Coverage is excluded for:

- **Assumed Liability**

Liability assumed by any insured under any contract or agreement, except for liability for damages that the insured would have in the absence of the contract or agreement or assumed liability caused by the failure to protect the private data of others first committed by or on behalf of the insured after the execution of such contract or agreement.

- **Bodily Injury, Property Damage or Personal and Advertising Injury**

Damages that are bodily injury or tangible property damage since this coverage form is only intended to provide coverage for damages because of failure to protect the private data of others. Tangible property does not include data or other information that is in electronic form.

- **Cost to Correct, Repair, Replace or Comply**

Any cost or expenses the insured incurs to correct, repair, replace or upgrade their property, facilities, software, systems or to comply with any regulation, ordinance, law, or contract.

- **Dishonest Acts**

Loss due to criminal or fraudulent act committed by or at the direction of the insured. This exclusion does not apply if the insured did not participate or know about the dishonest act. However, the exclusion will apply to all insureds if the dishonest act is done with consent or knowledge of the Named Insured or any of the Named Insured’s directors, partners or executive officers

- **Economic Injury**

Any loss of income, loss of profits, loss of royalties, monetary value of lost market share, loss of goodwill, or damage to business reputation.

- **Failure to Maintain**

Any claim resulting from the insured’s failure to take reasonable steps to design, use, maintain and upgrade security.

- **False Information**

Any information that is inaccurate, misleading or untruthful.

- **Fines or Penalties**

Any claim for damages arising out of any fines or penalties imposed by law.

- **Injunctive Relief**

Any injunctive or other equitable relief, or the cost to comply with such relief.

- **Insured versus Insured**

Any claim against an insured that is brought by or on behalf by another insured.

- **Intellectual Property**

Loss resulting from infringement of copyright, trade dress, trade secret, trade name, trademark or patent; unfair competition or piracy; misappropriation or wrongful taking of concepts, or any other violation or infringement of any other intellectual property right.

- **Intentional Acts**

Loss due to intentional act by the insured. This exclusion does not apply if the insured did not participate or know about the intentional act. However, the exclusion will apply to all insureds if the intentional act is done with consent or knowledge of the Named Insured or any of the Named Insured's directors, partners or executive officers.

- **Nuclear Energy**

- **Personal and Advertising Injury**

Damages that are personal and advertising injury, since this coverage form is only intended to provide coverage for damages because of failure to protect the private data of others.

- **Pollution**

- **Prior Knowledge or Reported Acts**

Any wrongful act the insured had knowledge of or any wrongful act that has been reported to another insurance company prior to the effective date of the policy period.

- **Violation of Statutes Governing Methods of Sending Material or Information**

Distribution of material that violates the Telephone Consumer Protection Act, the CAN-SPAM Act of 2003 or any other statute, ordinance or regulation, that prohibits or limits the sending, transmitting, communicating, or distribution of material or information.

- **Violation of Trade Law**

Any claim for damages arising out of any law relating to anti-trust, restraint of trade, unfair trade practices, false or deceptive advertising or any other law protecting competition or consumers.

## **SECTION II – WHO IS AN INSURED**

The following may be designated in the Declarations as insureds under this coverage form:

- An individual and his or her spouse;
- A partnership or joint venture;
- A limited liability company;
- An organization other than a partnership, joint venture or limited liability company; and

The following are also automatically considered insureds:

- Your employees, or managers of a limited liability company, but only while performing duties or acts related to the conduct of your business;

## **SECTION III – LIMITS OF INSURANCE**

The Aggregate Limit is the most that will be paid for the sum of all damages and defense costs because of claims arising from wrongful acts or series of related wrongful acts. The Per Claim Limit of Insurance is the most that will be pay for any one claim. However, we will not pay until the claim, including damages and defense costs, exceeds the deductible, and then we will pay only the amount in excess of the deductible. For the purposes of the application of any limit of insurance, regardless of the number of insureds or claimants involved, all claims arising out of a wrongful act or a series of related wrongful acts shall be deemed to be a single claim.

## **SECTION IV – SUPPLEMENTARY PAYMENTS**

The Supplementary Payments provision provides for defense expenses for any insured that the insurer defends. These payments will not reduce the limits of insurance.

## **SECTION V - DEDUCTIBLE**

The deductible applies to each claim. For the purpose of the application of the deductible, regardless of the number of insureds or claimants involved, all claims arising from a wrongful act or a series of related wrongful acts shall be deemed to be a single claim. The deductible applies to any payment for damages, defense costs or supplementary payments.

## **SECTION VI – EXTENDED REPORTING PERIOD**

A basic extended reporting period is automatically provided without additional charge. This period starts with the end of the policy period and lasts for 60 days after the end of the policy period.

An Extended Reporting Period (ERP) can be purchased for an additional charge and is available only by endorsement and lasts for 60 months or unlimited duration. The insured must request the ERP Endorsement within sixty days of the end of the policy period or effective date of cancellation. The additional premium will not exceed 200% of the annual premium for the Coverage Part.

The ERP starts with the end of the policy period, it only applies to claims in which the claim is first made during the ERP, the wrongful act occurs before the end of the policy period and did not commence before the retroactive date, if any.

## **SECTION VII - DEFINITIONS**

Commonly defined terms included in this coverage form include the following:

- **Advertisement;**
- **Claim;**
- **Coverage territory;**
- **Defense Costs;**
- **Employee;**
- **Executive officer;**
- **Leased worker;**
- **Nuclear facility**
- **Nuclear reactor**
- **Suit**
- **Temporary Worker**

Definitions that are unique to this coverage form are:

- **Private Data** means:

Information in your care, custody or control, and which you have a duty to protect that is:

- In a written or other tangible form, or;
- Contained on electronic media, or;
- Transmitted, processed, or retrieved through electronic means.

- **Series of related wrongful acts** means:

Two or more wrongful acts that have a common connection by reason of fact, circumstance, transaction or event.

- **Wrongful Act** means:

Your failure to protect the private data of others.

## **SECTION VIII – CONDITIONS**

The Conditions section includes the following conditions that are common to the liability coverage forms:

- **Bankruptcy**
- **Duties In The Event Of Wrongful Act, Claim, or Suit**



- **Legal Action Against Us**
- **Other Insurance**
- **Premium Audit**
- **Representations**
- **Separation Of Insureds**
- **Transfer Of Rights Of Recovery Against Others To Us**

### **C. Communications Liability Protection Coverage Form APR 010 06 07**

We are introducing a new optional coverage form entitled Communications Liability Protection Coverage Form under our Technology business segment. This form provides coverage for damages resulting from claims arising out of infringement of copyright, trademark, trade dress, service mark, service name, symbol, title, logo, slogan, or right of publicity. These acts must be committed by the insured in the conduct of their business.

Features of this new Coverage Form include:

- Claims-made coverage with defense costs included within limits.
- Covers communications wrongful acts as defined
- The communications wrongful act must take place after the retroactive date
- A deductible will apply.
- Automatic Extended Reporting Period of 60 days.
- Supplemental Extended Reporting Period of 5 years or unlimited duration for an additional premium
- Unique terms defined in the coverage form "Communications Wrongful Act" and "Series of Related Communication Wrongful Acts"

The following is a description of the main provisions of the new Communications Liability Protection Coverage Form.

### **SECTION I - COVERAGE**

#### **Insuring Agreement**

This form provides coverage for claims resulting from the infringement of copyright, trademark, trade name, trade dress, service mark, service name, symbol, title, logo or slogan; or violation of a person's or organization's right of publicity. Coverage will apply only if the loss is caused by a "communications wrongful act", takes place in the coverage territory, and was not committed before the retroactive date or after the end of the policy period.

As noted, this coverage is provided on a claims-made basis. Therefore, a claim for damages must first be made during the policy period or during an Extended Reporting Period, if provided.

A claim will be deemed to have been made either when notice of such claim is received by the insured or us, whichever comes first. All claims shall be deemed to have been made at the time the first of those claims is made against any insured. Claims will be considered to have been received within the policy period if they are received and recorded by the insured within 60 days after the end of the policy period and no other insurance applies to such claim.

#### **Exclusions**

Coverage is excluded for:

- **Assumed Liability**

Liability assumed by any insured under any contract or agreement, except for liability for damages that the insured would have in the absence of the contract or agreement or assumed liability caused by communications wrongful acts first committed by or on behalf of the insured after the execution of such contract or agreement.

- **Bodily Injury, Property Damage or Personal and Advertising Injury**

Damages that are bodily injury or tangible property damage since this coverage form is only intended to provide coverage for damages because of communications wrongful acts. Tangible property does not include data or other information that is in electronic form.

- **Computer Code or Software**

Any communications wrongful act involving software, its source code, or any other content of a software program; or piracy of computer code or a software product.

- **Dishonest Acts**

Loss due to actual or alleged dishonest acts, including fraudulent, criminal or malicious acts by an insured.

- **Economic Injury**

Any loss of income, loss of profits, loss of royalties, monetary value of lost market share, loss of goodwill, or damage to business reputation.

- **False Information**

Any information that is inaccurate, misleading or untruthful.

- **Fines or Penalties**

Any claim for damages arising out of any fines or penalties imposed by law.

- **Insured versus Insured**

Any claim against an insured that is brought by or on behalf by another insured.

- **Intentional Infringement**

Loss due to any actual or alleged intentional infringement by an insured.

- **Multiplied Damages**

Any multiple portion of any multiplied damages award.

- **Nuclear Energy**

- **Patent and Trade Secrets**

Loss due to any actual or alleged infringement, violation, rights or laws, or misappropriation relating to any patent or trade secret.

- **Personal and Advertising Injury**

Damages that are personal and advertising injury, since this coverage form is only intended to provide coverage for damages because of communications wrongful acts.

- **Pollution**

- **Prior Knowledge or Reported Acts**

Any communications wrongful act the insured had knowledge of or any communications wrongful act that has been reported to another insurance company prior to the effective date of the policy period.

- **Violation of Statutes Governing Methods of Sending Material or Information**

Distribution of material that violates the Telephone Consumer Protection Act, the CAN-SPAM Act of 2003 or any other statute, ordinance or regulation, that prohibits or limits the sending, transmitting, communicating, or distribution of material or information.

- **Violation of Trade Law**

Any claim for damages arising out of any law relating to anti-trust, restraint of trade, unfair trade practices, false or deceptive advertising or any other law protecting competition or consumers.

## **SECTION II – WHO IS AN INSURED**

The following may be designated in the Declarations as insureds under this coverage form:

- An individual and his or her spouse;

- A partnership or joint venture;
- A limited liability company;
- An organization other than a partnership, joint venture or limited liability company; and

The following are also automatically considered insureds:

- Your employees, or managers of a limited liability company, but only while performing duties or acts related to the conduct of your business;

### **SECTION III – LIMITS OF INSURANCE**

The Aggregate Limit is the most that will be paid for the sum of all damages and defense costs because of claims arising from communications wrongful acts or series of related communications wrongful acts. The Per Claim Limit of Insurance is the most that will be pay for any one claim. However, we will not pay until the claim, including damages and defense costs, exceeds the deductible, and then we will pay only the amount in excess of the deductible. For the purposes of the application of any limit of insurance, regardless of the number of insureds or claimants involved, all claims arising out of a wrongful act or a series of related wrongful acts shall be deemed to be a single claim.

### **SECTION IV – SUPPLEMENTARY PAYMENTS**

The Supplementary Payments provision provides for defense expenses for any insured that the insurer defends. These payments will not reduce the limits of insurance.

### **SECTION V - DEDUCTIBLE**

The deductible applies to each claim. For the purpose of the application of the deductible, regardless of the number of insureds or claimants involved, all claims arising from a communications wrongful act or a series of related wrongful acts shall be deemed to be a single claim. The deductible applies to any payment for damages, defense costs or supplementary payments.

### **SECTION VI – EXTENDED REPORTING PERIOD**

A basic extended reporting period is automatically provided without additional charge. This period starts with the end of the policy period and lasts for 60 days after the end of the policy period.

An Extended Reporting Period (ERP) can be purchased for an additional charge and is available only by endorsement and lasts for 60 months or unlimited duration. The insured must request the ERP Endorsement within sixty days of the end of the policy period or effective date of cancellation. The additional premium will not exceed 200% of the annual premium for the Coverage Part.

The ERP starts with the end of the policy period, it only applies to claims in which the claim is first made during the ERP, the wrongful act occurs before the end of the policy period and did not commence before the retroactive date, if any.

### **SECTION VII - DEFINITIONS**

Commonly defined terms included in this coverage form include the following:

- **Advertisement;**
- **Claim;**
- **Coverage territory;**
- **Defense Costs;**
- **Employee;**
- **Executive officer;**
- **Leased worker;**
- **Nuclear facility**
- **Nuclear reactor**
- **Suit**

- **Temporary Worker**

Definitions that are unique to this coverage form are:

- **Communications wrongful act** means the following committed by the insured in the conduct of their business:
  - Infringement of copyright, trademark, trade name, trade dress, service mark, service name, symbol, title, logo or slogan; or
  - Violation of a person's or organizations' right of privacy.
- **Series of related communications wrongful acts** means:

Two or more communications wrongful acts that have a common connection by reason of fact, circumstance, transaction or event.

## **SECTION VIII – CONDITIONS**

The Conditions section includes the following conditions that are common to the liability coverage forms:

- **Bankruptcy**
- **Duties In The Event Of Wrongful Act, Claim, or Suit**
- **Legal Action Against Us**
- **Other Insurance**
- **Premium Audit**
- **Representations**
- **Separation Of Insureds**
- **Transfer Of Rights Of Recovery Against Others To Us**

## **Part II - Multistate Endorsements - Technology Errors or Omissions**

- A. Revised endorsement: Supplemental Extended Reporting Period Endorsement APR 206 06 07** - The 06 07 edition replaces the 03 06 edition. The endorsement has been amended to include Data Privacy Liability Protection Coverage and Communications Liability Protection Coverage Forms. There is no change to the text.
- B. Revised endorsement: Unauthorized Access Endorsement APR 218 06 07** - The 06 07 edition replaces the 03 06 edition. Editorial revisions have been made to reference exclusion **q.** in the Technology Errors or Omissions Coverage Form APR 001 and deletes "of your technology offerings" in the penultimate paragraph to further clarify intent. There is no coverage impact with these changes.
- C. New optional endorsement – Total Intellectual Property Exclusion APR 222 06 07** –This endorsement modifies the Technology Errors or Omissions Coverage Form APR 001. The coverage form excludes coverage for our insured's direct infringement only. Endorsement APR 222 gives us the ability to write the risk that presents greater intellectual property exposures than we wish to cover versus having to decline the risk.

**Filing Explanatory Memorandum  
2007 Technology General Liability Product  
@vantage For Form Changes**

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We are introducing a new endorsement in the @vantage Product as follows:

**VCG 207 06 07 – @vantage For General Liability - Technology Companies**

This is an optional endorsement containing 18 coverage extensions. Because of the uniqueness of the exposures presented by the technology industry, we have created this extended endorsement specific to technology classes of business. It replaces VCG 205 Special General Liability Endorsement.

Changes in coverage include the following:

**Broadenings**

- The Personal and Advertising Injury provision has been amended. The exclusion for Internet Search, access, content or service providers has been removed.

**Reductions**

- The Incidental Medical Malpractice coverage provision has been removed.
- The Broadened Property – Damage to Rented Premises provision has been removed.

**Arkansas Supplement  
Filing Explanatory Memorandum  
2007 Technology Professional Liability Product  
@vantage For Forms and Endorsements Changes**

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In addition to the forms and endorsements changes described by our companies in the countrywide portion of this Explanatory memorandum, the following forms and endorsements changes apply specifically to the new @vantage For Professional Liability coverage forms used in Arkansas:

**APR 704 AR 06 07 – Arkansas Changes**

Editorial revisions only. The endorsement is revised to reference the new coverage forms in the list of forms that the endorsement modifies. Replaces the 03 06 edition.

# TECHNOLOGY ERRORS OR OMISSIONS COVERAGE FORM

THIS FORM PROVIDES CLAIMS MADE COVERAGE. PLEASE READ THE ENTIRE FORM CAREFULLY.

Read this entire coverage form carefully to determine rights, duties and what is and is not covered. Various provisions in this policy restrict coverage.

Throughout this coverage form, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under **Section II – WHO IS AN INSURED**.

Other words and phrases that appear in **bold** may have special meaning. Refer to **Section VII – DEFINITIONS**.

## SECTION I - COVERAGE

### 1. Insuring Agreement

- a. We will pay damages that the insured becomes legally obligated to pay arising out of **your technology offerings** because of an **error or omission** to which this insurance applies. We will have the right and duty to defend the insured against **suits** seeking covered damages. However, we will have no duty to defend the insured for **suits** to which this insurance does not apply. We may, at our discretion, investigate any **claim** based on an alleged **error or omission**. But:
- (1) Both the amount we will pay for damages and the amount we will pay in **defense costs** are limited as described in **Section III - LIMITS OF INSURANCE** and **Section V - DEDUCTIBLE**; and
  - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in payment of judgments, settlements or **defense costs**. No other obligation or liability to pay sums or perform acts or services is covered.
- b. This insurance applies to **claims** for damages first made against an insured during the policy period or any Extended Reporting Period we provide under **Section VI – EXTENDED REPORTING PERIODS** caused by an **error or omission** if:
- (1) The **claim** arises out of an **error or omission** that takes place in the **Coverage territory**; and
  - (2) The **error or omission** takes place:
    - (a) After the Retroactive Date, if any, shown in the Declarations; and
    - (b) Before the end of the policy period.

Each **error or omission** in a **series of related errors or omissions** will be deemed to have been committed on the date the first **error or omission** in a **series of related errors or omissions** is committed. The first error or omission in a series of related errors or omissions must take place after the Retroactive Date, if any, shown in the Declarations, and before the end of the policy period for this insurance to apply.

- c. A **claim** by a person or organization seeking damages will be deemed to have been made at the earlier of the following times:

- (1) When notice of such **claim** is received by any insured or by us, whichever comes first; or;
- (2) If notice of an **error or omission** is provided pursuant to **SECTION VIII - CONDITIONS** and a **claim** based on that **error or omission** is subsequently made, the date we receive written notice of such **error or omission**.

If multiple **claims** result from the same **error or omission**, or series of related **errors or omissions**, all such **claims** will be deemed to have been made on the date the first of those **claims** is made.

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2. Exclusions

This insurance does not apply to any **claim** based upon, arising out of or in any way related to:

a. **Assumed Liability**

Liability assumed by any insured under any contract or agreement. This exclusion does not apply to:

- (1) Liability for damages that the insured would have had in the absence of the contract or agreement; or
- (2) Liability assumed in a contract or agreement provided that the damages, to which this insurance applies, are caused by **errors or omissions** first committed by you or on your behalf after the execution of such contract or agreement.

b. **Bodily Injury or Property Damage**

- (1) Bodily injury, sickness, disease, mental anguish, mental injury, humiliation, shock, loss of services or death; or
- (2) Physical injury to tangible property whether or not owned by any insured, including all resulting loss of use of that property. Tangible property does not include data or other information that is in electronic form.

c. **Correct, Repair or Replace**

The cost or expense for the correction, repair or replacement of **your technology offerings**.

d. **Cost Estimates**

Your costs, charges or fees that:

- (1) Exceed your, or your agent's, guarantees or estimates;
- (2) Are misrepresented, not accurately described in your contract or agreement or not accurately calculated; or
- (3) Are charged for taxes that are neither owed nor remitted to a governmental entity.

e. **Delay in Delivery**

- (1) Delay in delivery of; or
- (2) Failure to deliver

**your technology offerings.**

f. **Delay in Performance**

- (1) Delay in performance of; or
- (2) Failure to begin

**your technology offerings.**

g. **Dishonest Acts**

Any actual or alleged dishonest act, including fraudulent, criminal or malicious acts, committed by an insured. This exclusion does not apply to any insured that did not participate in or know about the dishonest act. However we will apply this exclusion to all insureds if the dishonest act is done with the consent or knowledge of the Named Insured or any of the Named Insured's directors, partners or executive officers.

h. **Fines or Penalties**

Any fines or penalties imposed by law.

i. **Insured versus Insured**

Any claim against an insured that is brought by, or on behalf of, any insured.

j. **Intellectual Property**

Any actual or alleged infringement by an insured of copyright, trade dress, trade secret, trade name, trademark or patent; unfair competition or piracy; misappropriation or wrongful taking of concepts, violation or infringement of any other intellectual property right.

Deleted: c. **Ceasing Support**

Any decision by an insured:

- (1) Not to support; or
- (2) To cease to support

**your technology offerings.**

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Deleted: i. **Financial Impairment**

Any bankruptcy, insolvency, or other financial impairment of any insured.

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Deleted: l. **Illegal Profits**  
Any profit to which the insured is not legally entitled.

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**k. Intentional Acts**

Any actual or alleged intentional act committed by an insured. This exclusion does not apply to any insured that did not participate in or know about the intentional act. However, we will apply this exclusion to all insureds if the intentional act is done with the consent or knowledge of the Named Insured or any of the Named Insureds directors, partners or executive officers.

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**l. Nuclear Energy**

The furnishing by an insured of services, products, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**.

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**m. Personal and Advertising Injury**

Injury, including consequential bodily injury, arising out of one or more of the following offenses:

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- (1) False arrest, detention or imprisonment;
- (2) Malicious prosecution;
- (3) The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- (4) Libel or slander;
- (5) Oral or written publication, in any manner, of material that disparages a person's or organization's goods, products or services;
- (6) Oral or written publication, in any manner, of material that violates a person's right of privacy or right of publicity; or
- (7) The use of another's advertising idea in your **advertisement**.

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**n. Prior Reported Claims**

Any claims that have been reported, in whole or in part, to another insurance company prior to the first effective date from which we have continuously provided this coverage to you.

**o. Pollution**

- (1) The actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of pollutants.
- (2) Any request, demand or order issued or made pursuant to any environmental protection or environmental liability laws that you or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants.

Pollutants means one or more solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, mold(s), alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**p. Product Recall**

The withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

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- (1) **Your products**;
- (2) Any property on which **your work** was performed; or
- (3) Impaired property, meaning tangible property other than **your technology offerings**, that cannot be used or is less useful because:
  - (a) It incorporates **your technology offerings** that is known or thought to be defective, deficient, or inadequate; or
  - (b) You have failed to fulfill the terms of a contract or agreement;If such property can be restored to use by:
  - (i) The repair, replacement, adjustment or removal of **your technology offerings**, or
  - (ii) Your fulfilling the terms of the contract or agreement;

If such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, or inadequacy in **your technology offerings** or impaired property.

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However, we will not apply this exclusion to claims by third parties for loss of use resulting from the withdrawal, recall, inspection, repair, replacement, adjustment or removal of **your technology offerings**.

**g. Unauthorized Access**

Failure to prevent unauthorized access to, or use of any computer, software, network or electronic information system.

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**r. Violation of Statutes Governing Methods of Sending Material or Information**

Any distribution of material that violated or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating, or distribution of material or information.

**s. Violation of Trade Law**

Any actual or alleged violation of any law relating to anti-trust, restraint of trade, unfair trade practices, false or deceptive advertising or any other law protecting competition, consumers or privacy.

**SECTION II – WHO IS AN INSURED**

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture, or limited liability company, you are an insured. Your **executive officers** and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
  - a. Your **employees**, other than either your **executive officers** (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.
  - b. Any organization you newly acquire or form, other than a partnership, joint venture, or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However, coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture, or limited liability company that is not shown as a Named Insured in the Declarations.

**SECTION III – LIMITS OF INSURANCE**

1. The Limit of Insurance shown in the Declarations for this coverage and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. **Claims** made; or
  - c. Persons or organizations making **claims**.
2. The Limit of Insurance stated as the Annual Aggregate Limit is the most we will pay for the sum of:
  - a. Damages for any **claim(s)**; and

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**b. Defense costs** for any **claim(s)** seeking damages payable under **a.** above.

Each payment we make for such damages or **defense costs** reduces the amount of limit available under the Annual Aggregate Limit by the amount of such payment. This reduced limit will then be the Annual Aggregate Limit of Insurance available. When this Annual Aggregate Limit of Insurance is used up, we shall have no further obligation to defend **claim(s)** seeking such damage or pay such damages or **defense costs**.

The Annual Aggregate Limit of Insurance applies separately to each consecutive annual period, and to any remaining period of less than 12 months, starting with the beginning of the policy shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Annual Aggregate Limit of Insurance.

3. Subject to 2. above, the most we will pay for each **claim**, including defense costs for that claim, is the Per Claim Limit of Insurance stated in the Declarations. However, we will not pay until the **claim**, including damages and **Defense costs**, exceeds the Deductible, and then we will pay only the amount in excess of the Deductible.
4. For the purpose of the application of any Limit of Insurance, regardless of the number of insureds or claimants involved, all **claims** arising from an **error or omission** or a **series of related errors or omissions** shall be deemed to be a single **claim**.
5. This insurance applies separately to each insured against whom a **claim** is made. However, the Limits of Insurance are not increased by the number of insureds under the policy.

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#### SECTION IV - SUPPLEMENTARY PAYMENTS

1. We will pay, with respect to any **claim** we investigate or settle, or any **suit** against an insured we defend:
  - a. All expenses other than **defense costs** we incur.
  - b. the cost of bonds to release attachments, but only for bond amounts within the applicable Limit of Insurance. We do not have to furnish these bonds.
  - c. All costs, not including **defense costs**, taxed against the insured in a **suit**.
  - d. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance to resolve a claim, we will not pay any prejudgment interest accrued after the offer.
  - e. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Insurance.
2. These payments will not reduce the Limits of insurance. Our obligation to make these payments ends when we have used up the applicable Limits of Insurance.

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#### SECTION V - DEDUCTIBLE

1. Your Deductible is the amount shown in the Declarations and applies to each **claim**.
2. For the purpose of the application of the Deductible, regardless of the number of insureds or claimants involved, all **claims** arising from an **error or omission** or a **series of related errors or omissions** shall be deemed to be a single **claim**. Your deductible applies to any payment we make for damages, **defense costs** or Supplementary Payments.
3. We may pay any part or all of the Deductible to settle any **claim**. When we notify you of such payment, you will reimburse us as soon as practicable for such part of the Deductible we paid.

#### SECTION VI - EXTENDED REPORTING PERIODS

1. We will provide one or more Extended Reporting Periods, as described below, if:
  - a. This Coverage Part is canceled or not renewed for any reason except non-payment of the premium; or
  - b. We renew or replace this Coverage Part with insurance that:
    - (1) Has a Retroactive Date later than the date shown in the Declarations of this Coverage Part; or
    - (2) Does not apply to **error or omission** on a claims made basis.
2. Extended Reporting Periods do not extend the policy period or change the scope of coverage provided. They apply only to **claims** for **errors or omissions** that take place after the Retroactive Date, if any, shown in the

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Declarations and before the end of the policy period. Once in effect, Extended Reporting Periods may not be canceled.

3. A Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the policy period and lasts for 60 days after the end of the policy period.

The Basic Extended Reporting Period does not apply to **claims** that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such **claims**.

4. A Supplemental Extended Reporting Period is available for terms of 60 months or unlimited duration, but only by an endorsement and for an extra charge. This supplemental period starts 60 days after the end of the policy period.

You must give us a written request for the endorsement, specifying which term is desired, within 60 days after the end of the policy period. The Supplemental Extended Reporting Period will not go into effect unless the insured pays the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

- a. The exposures insured;
- b. Previous types and amounts of insurance;
- c. Limits of Insurance available under this Coverage Part for future payments of damages; and
- d. Other related factors.

The additional premium will not exceed 200% of the annual premium for this Coverage Part.

The endorsement shall set forth the terms, not inconsistent with this Section, applicable to the Supplemental Extended Reporting Period.

The Supplemental Extended Reporting Period does not apply to **claims** that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such **claims**.

5. Extended Reporting Periods do not reinstate or increase the Limits of Insurance applicable to any **claim** to which this coverage form applies.
6. If we cancel or non-renew this coverage form, we will include with the notice of cancellation or non-renewal a Notice To Our Policyholder in which we will advise the insured of the availability of the Supplemental Extended Reporting Period, the additional premium charge of the Supplemental Extended Reporting Period and the importance of purchasing the Supplemental Extended Reporting Period option.

If the insured cancels or non-renews this coverage form or if we agree to renew subject to specific conditions; we will provide the insured with the Notice To Our Policyholder described above within 30 days of the effective date of policy termination or conditional renewal.

## SECTION VII - DEFINITIONS

1. **Advertisement** means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purpose of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and

- b. Only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

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2. **Claim** means any written demand for money or services, **suit**, or threat to institute a **suit** based on an actual or alleged **error or omission**.

3. **Coverage territory** means anywhere in the world.

4. **Defense costs** means fees incurred by an attorney we designate; and all other reasonable fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **claim** or **suit**. Such fees, costs and expenses must be incurred by us; an attorney we designate; or by the insured with our consent.

Defense costs includes up to \$1,500 per day in actual lost earnings incurred by the insured due to time

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taken off from work at our request and in support of our investigation, adjustment or defense or appeal of a claim or suit.

5. **Employee** includes a **leased worker** or an **individual contracted worker**. **Employee** does not include a **temporary worker**.
6. **Error or omission** means any negligent act, error or omission committed by you in the conduct of your business resulting in the failure of your technology offerings to perform the function or serve the purpose intended.
7. **Executive officer** means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
8. **Individual contracted worker** means an individual person hired under contract by you for a specific task, but only while acting within the scope of their duties for you and performing duties related to the conduct of your business under your direction.
9. **Leased worker** means a person leased to you by a labor leasing firm, under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. **Leased worker** does not include a **temporary worker**.
10. **Nuclear facility** means:
- Any **nuclear reactor**;
  - Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste;
  - Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combinations thereof, or more than 250 grams of uranium 235;
  - Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of, waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

11. **Nuclear reactor** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

12. **Series of related errors or omissions** means two or more errors or omissions that have a common connection by reason of fact, circumstance, transaction or event.

13. **Suit** means a civil proceeding seeking damages based on an alleged error or omission to which this insurance applies. **Suit** includes:

- An arbitration proceeding in which such damages are alleged to which you must submit, or one to which you may submit with our consent.
- Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

14. **Temporary worker** means a person who is furnished to you to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions.

15. **Your products** means goods, programs, designs, products, services or components which you or others trading under your name manufactured, sold, handled, or distributed.

**Your products** includes:

- Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of your products; and
- The providing of or failure to provide warnings or instructions.

16. **Your technology offerings** means your products and your work.

17. **Your work** means work, service or operations performed by you or on your behalf for others including:

- Analyzing, designing, integrating, maintaining, processing, programming, providing repairing or servicing software, programs or systems; or
- Analyzing, designing or maintaining any communications network, web site or internet operation; or

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- c. Managing or processing data or other information that is in electronic form; or
- d. Consulting, staffing, training and other support services related to **your technology offerings**; or
- e. Materials, parts or equipment furnished in connection with such work.

**Your work** includes;

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your work**; and
- b. The providing of or failure to provide warnings and instructions.

## SECTION VIII - CONDITIONS

The following conditions apply in addition to the Common Policy Conditions. In case of conflict between these conditions and the Common Policy Conditions, these conditions shall apply as respects this Coverage Part.

### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

### 2. Duties in the Event of Error or Omission, Claim, or Suit

- a. When you become aware of an error or omission, you must see to it that we are notified as soon as practicable of the error or omission. The notice must include:

- (1) How, when and where the **error or omission** took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any damage arising out of the **error or omission**.

Notice of an **error or omission** is not notice of a **claim**. However, any **claim** resulting from the circumstances described in a notice of an **error or omission** will be deemed to have been made on the date we receive such notice.

- b. If a **claim** is made or **suit** is brought against any insured, you must:

- (1) Immediately record the specifics of the **claim** or **suit** and the date received; and
- (2) See to it we receive written notice of the **claim** or **suit** as soon as practicable;
- (3) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **claim** or **suit**;
- (4) Authorize us to obtain records and other information relating to the claim or suit;
- (5) Cooperate with us in the investigation, settlement or defense of the **claim** or **suit**; and
- (6) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to an insured for the covered damages which we paid in the claim or suit to which this insurance may also apply.

- c. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, incur any expense, or settle any claim or suit, without our consent.

### 3. Legal Action Against Us

No person or organization has a right under this coverage form:

- a. To join us as a party or otherwise bring us into a **suit** asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial, but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

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**a. Excess Insurance**

This insurance is excess over any other collectible insurance, whether primary, excess, contingent or on any other basis, including insurance that is effective prior to the beginning of the policy period shown in the Declarations of this insurance and applies to **errors or omissions** on other than a **claims made** basis.

We will have no duty to defend the insured against any **claim** or **suit** if any other insurer has a duty to defend the insured against that **claim** or **suit**. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

We will pay only our share of the amount of the **claim** or **suit**, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining amount, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**b. Non Accumulation of Limits**

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same **claim**, the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this coverage form.

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If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable Limit of Insurance or none of the loss remains, whichever comes first.¶  
If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable Limit of Insurance to the total applicable Limits of Insurance of all insurers.¶  
**c.**

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations, documentation, data and other material you have furnished us.

**7. Separation of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom **claim** is made or **suit** is brought.

**8. Transfer of Rights of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring **suit** or transfer those rights to us and help us enforce them. Any recovery will be paid first to us until all amounts we have spent on a **claim** or **suit** have been reimbursed. The insured expressly waives the right to be made whole by any such recovery.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## SUPPLEMENTAL EXTENDED REPORTING PERIOD

This endorsement modifies insurance provided under the following:

TECHNOLOGY ERRORS OR OMISSIONS COVERAGE FORM  
MANUFACTURING ERRORS OR OMISSIONS COVERAGE FORM  
COMMUNICATIONS LIABILITY PROTECTION COVERAGE FORM  
DATA PRIVACY LIABILITY PROTECTION COVERAGE FORM

**THIS ENDORSEMENT DOES NOT REINSTATE THE ANNUAL AGGREGATE LIMIT OF INSURANCE.**

Named Insured: \_\_\_\_\_

Policy Number: \_\_\_\_\_ Endorsement Additional Premium: \_\_\_\_\_

Endorsement Effective Date: \_\_\_\_\_ Duration of SERP: \_\_\_\_\_

(If the above fields are not completed, refer to the Declarations for the applicable information.)

A Supplemental Extended Reporting Period as described in the **Extended Reporting Periods Section** of the policy is provided for a period of 60 months or of unlimited duration, whichever is stated above. This Supplemental Extended Reporting Period begins sixty (60) days after the end of the policy period.

The coverage provided by this endorsement is excess over any other valid and collectible insurance available to the insured, whether primary, excess, contingent or on any other basis, whose policy period begins or continues after the Supplemental Extended Reporting Period begins.

This endorsement shall not take effect until all additional premiums stated above have been paid in full when due. Once paid in full, this endorsement may not be canceled.

**The undersigned Named Insured understands the provisions of this endorsement and is aware that the Limits of Insurance are not reinstated by this endorsement.**

Signed \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

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UNAUTHORIZED ACCESS

This endorsement modifies the insurance provided under the following:

TECHNOLOGY ERRORS OR OMISSIONS COVERAGE FORM

Section I – **COVERAGE**, paragraph 2. **Exclusions**, subparagraph ~~g.~~ is deleted and replaced by the following:

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Unauthorized Access

This insurance does not apply to any **claim** arising out of the failure to prevent unauthorized access to, or use of any computer, software, network or electronic information system.

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This exclusion does not apply to **claims** resulting from the failure of **your technology offerings** to function or serve the purpose intended.

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## ARKANSAS CHANGES

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ERRORS OR OMISSIONS  
COVERAGE FORM

This endorsement modifies insurance provided under the following:

TECHNOLOGY ERRORS OR OMISSIONS COVERAGE FORM  
COMMUNICATIONS LIABILITY PROTECTION COVERAGE FORM  
DATA PRIVACY LIABILITY PROTECTION COVERAGE FORM

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- A. Section **VI – Extended Reporting Periods**, paragraph **1.a.** is replaced by the following:
1. We will provide one or more Extended Reporting Periods, as described below, if:
    - a. This Coverage Part is canceled or not renewed for any reason; or
- B. Section **VI – Extended Reporting Periods**, paragraph **5.** is replaced by the following:
5. Extended Reporting Periods do not reinstate or increase the Limits of Insurance applicable to any **claim** to which this Coverage Part applies, except to the extent described in paragraph **7.** of this Section.
- C. The following paragraph is added to Section **VI – Extended Reporting Periods**:
7. If the supplemental extended reporting period is in effect, we will provide a separate Aggregate Limit of Insurance no less than the greater of:
    - a. The amount of coverage remaining in the expiring policy's aggregate; or
    - b. Fifty percent (50%) of the expiring policy's aggregate limit at inception.
- This separate Aggregate Limit of Insurance applies only to **claims** first received and recorded during the supplemental extended reporting period.

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